Q. —"an employee of the Pinnacle Packing Company whom you treated in September, you reported and made a charge for a fracture of the right humerus. X-ray plates, however, taken at the Sacred Heart Hospital were sent to us and referred to Dr. Woolley for a reading," and then the doctor's report, that doctor's report is stated, and that report says that there was no evidence of traumatic pathology and then they asked you to render an itemized statement of the services, "in order that we may determine the correct fee, since the fracture fee apparently would not apply."

You then wrote to the National Hospital Association in a letter of December 7, 1936 suggesting that they have
1569 Dr. Woolley recheck the films because, you say, "without having to look very closely he will notice in one of the views that there is a lineal fracture of the upper third of the bone."

Then there is another letter from National to you in which it is stated that the X-ray film which you had sent was reported by both Drs. Butler and Woolley as negative for the fracture. You then wrote to the hospital that services rendered this patient consisted of application of cast to the arm which relieved the pain to some extent, and you state that you believed that $15 should be sufficient to cover services rendered.

Now, do you think it improper for them to have had the X-rays examined? A. Oh, no, not a bit. There is a good honest difference of opinion.

Q. You don't think it was improper for them to— A. I do not, and I made just the charge set out for the application of the cast, and that was all.

Q. In other words, you think it is quite proper for a prepaid medical care organization to request X-rays when X-rays are taken so that they would have a chance to examine them? A. Well, the X-rays are taken at their expense, they are their property.

Q. You are referring to X-rays which you have
1570 ordered to have taken for a patient of yours who was under a National Hospital Association contract? A. And that bill was paid by Industrial or National, whichever it was.

Q. Now, Doctor, you have testified with respect to Defendants' Exhibit 2513 which dealt with insulin treatments given a certain patient who was under a National Hospital Association contract, and do you think that it was improper for the Association to ask whether the patient could not

have given himself those insulin shots? A. Well, I think your answer is very obvious. In the letter I saw him eight times in March, and he gave himself insulin three times a day, or ninety times in a month. I think the person who wrote the letter didn't know anything about medicine. It is part of the lay control of medicine we are objecting to.

Q. Doctor, I have asked you a specific question. A. Will you repeat it.

Q. And please confine yourself to answering that specific question. I am asking you whether you thought it improper for the National Hospital Association to have asked why the patient could not have taken the insulin shots himself. A. He took insulin shots himself.

Mr. Marcus: Would you mind repeating that question, Mr. Reporter. I would appreciate it if you would pay a little attention, Doctor, to the question and then the attempt to answer.

1571 (Last question read.)

A. All right.

Mr. Marcus:

Q. Well, do you think it was improper? A. No.

Q. Now, Doctor, I have here Exhibit 2573 of the Defendants. Before asking you questions about it perhaps you might glance at it.

Now, Doctor, that was another case, was it not, where there was some question of what the X-rays showed? A. I believe in this case it was a question as to what the entire diagnosis was.

Q. And the final result was that Dr. Hayes verified your report on the case? A. Yes, sir.

Q. And Dr. Hayes also suggested that the man be sent to Portland, did he not? A. Yes, sir.

Q. Then it appears that you sent in a bill in the sum of $51 and you were asked whether his condition required that daily visits be made, and then it was stated that, "However, we are not questioning your judgment but would like to have the information."

Now, there is no further correspondence in this sheaf of correspondence. So far as you know that bill was finally paid, was it not? A. I do not know.

1572 Q. Doctor, it is true, is it not, that in a number of instances in your dealings with the National Hospital Association they would question your bill and you would take it up with them and that in some instances you would

finally be paid in full and some instances you would not, is that not so? A. That is not so.

Q. Are you implying that in no instances were you paid in full after taking it up with them? A. To the best of my knowledge, after taking up a disputed bill with the National Hospital Association I was not paid in full. There was always a compromise on my part, always a giving in on my part. It never was any compromise on their part.

Q. Doctor, you may pardon me, but you do not appear to be an entirely meek person. Why is it that you always compromised? A. Why, I don't know.

Q. Doctor, you testified with respect to Exhibits 2514 to 2566 of the Defendants, which are statements you sent to National Hospital Association and then were returned to you, that these represented instances where your bills were cut down 20 per cent, 50 per cent, and so forth. You so testified, did you not? A. Yes, sir.

Q. It is true, Doctor, that these statements show that in the majority of instances as to the bills you sent in there was no reduction at all? A. No, sir. There was re-

1573 duction on all those marked with asterisks.

Q. Well, one statement refers to perhaps twenty or thirty or forty different persons whom you have treated for various things? A. Yes, sir.

Q. Now, is it your contention that with respect to the majority of those persons who had some sort of treatment from you your bills as to those particular persons were cut down? A. If you will take the whole group as an average, yes, sir.

It is true, is it not, Doctor, that those particular accounts marked with an asterisk were the accounts which were cut down? A. That is, I believe, their custom.

Q. So that these bills on their face would show whether or not what you have stated is true, would they not? A. Yes, sir.

Q. Now, I notice, Doctor, that almost all these bills relate to the period of 1931 to 1934, with one or two in the later years. It is true, is it not, that with respect to those bills which were cut down that that occurred mainly during the depression years of 1931 to 1935? A. I don't know the dates on them. They are there, sir.

Q. And during that period, Doctor, did you always receive your full fee from private patients? A. No, sir. But the National Hospital received its full pay.

1574 Q. I am asking you a question, Doctor. Will you please confine yourself to answering—

Mr. Jaureguy: I want to object to that.

Mr. Marcus:

Q. —your answer is No? A. No, sir.

Mr. Jaureguy: Witnesses have the right to explain their answers if they wish. With all due respect, I am addressing my remarks to the Court, and I want to ask that this witness may be given the right to explain his answer at the time he is giving his answer.

The Court: He may.

Mr. Jaureguy: Will you make your explanation.

A. I said No in regard to the question of whether I received fees all during the depression, but I said National Hospital took full deductions from the man's payroll every month during the depression.

Mr. Marcus: I move to strike that out, your Honor. That is purely hearsay.

The Court: The motion is denied.

Mr. Marcus:

Q. You have no personal knowledge of that last statement do you, Doctor? A. Just what the patients told me.

Q. Then it is hearsay.

Now, Doctor, you stated, I believe, that you are a member of the Jackson County Medical Society? A. Yes, sir.

Q. And have you ever been an officer of that Society? A. Yes, sir.

Q. During what years? A. You have the minutes, sir. I don't remember. During the war.

Q. And have you been on any of the committees of the Jackson County Medical Society? A. Yes, sir.

Q. Have you ever been an officer of the State Medical Society? A. No, sir.

Q. On any of its committees? A. Yes, sir.

Q. Tell us what committees. A. Well, I was chairman of the Entertainment Committee for the convention in 1948 in Medford. I have been on the maternal and child care committee. I have been on the public health committee. I have been on the infant care committee. I have been on a committee for the credentials of delegates. I have been on a committee for report of committees, and so on.

(Letter by Insurance Commissioner of State of California to law firm of Cake, Jaureguy & Tooze, dated January 6,

1950, was marked for identification Defendants' Exhibit 2761.)

1576 Q. Have you ever been a delegate from the Jackson County Medical Society to the State Society? A. Yes, sir.

Q. Have you been a member of the Southern Oregon Medical Society? A. Yes, sir.

Q. Ever been an officer? A. No, sir.

Q. Doctor, have you, in connection with these medical societies, ever had anything to do with questions of prepaid medical care and contract practice of medicine? A. I have never been on any official committee; no, sir; just an opinion as an individual.

Q. Have you participated in discussions at meetings of the societies with respect to those questions? A. I believe such is my right.

Q. Is your answer Yes? A. Yes.

Q. Doctor, I am going to ask you a question as to which you may not know the answer. I am just trying to find out some information.

Isn't it true that during the early period when hospital associations were in the various areas of the state, the fees they paid were largely determined by their taking the matter up in the first instance with representatives

1577 of the local societies? A. Not to my knowledge.

Q. You don't know? A. Not to my knowledge, no.

Q. Would you know whether in some instances hospital associations were directed to account by doctors? A. I don't know.

Q. Did that ever occur in your case? A. No, sir.

Q. Doctor, let me ask you this: Were you one of the doctors who formed the Southern Oregon Medical Society? A. Yes, sir.

Q. Were you ever an officer of that organization? A. Not to my knowledge, sir.

Q. Are you a participating physician of OPS? A. Yes, sir.

Q. Is that the only prepaid medical care organization with which you deal directly? A. I deal directly with the United States Civil Service Reimbursement Commission and two or three other Federal prepaid medical care plans.

Q. Those are the only ones? A. Oh, there are four or five of those.

Q. You say four or five? You mean Government agencies? A. In addition to OPS.

1578 Q. Have you ever been an officer of OPS? A. No, sir.

Q. Have you ever been a member of the Jackson County division of OPS? A. I am a participating member of the Jackson County pool.

Q. They have an actual organization known as a division, don't they? A. It is called the Jackson County pool.

Q. Well, when you say "Jackson County pool" it is actually an organization? A. I don't know, sir.

Q. They have meetings, don't they? A. We have our pool, as we call it. I don't know it by any other name.

Q. But they have meetings, don't they? A. Yes, sir.

Q. Do they have a supervisory committee in Jackson County? A. Yes, sir, of the local pool.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. You also, in addition to these Government agencies and other agencies you mentioned, take care of men entitled to care under the State Industrial Accident

1579 Commission? A. Yes, sir, and I am one of the designate physicians of the Veterans Administration, and the Standard Oil Company of California, Standard Stations, Incorporated, California State Industrial Accident Commission, and so on.

Q. In connection with the Oregon State Industrial Accident Commission, do you have the interference with the doctor-patient relationship that you object to here? A. No, sir; and, in addition, all disputed bills with the State Industrial Accident Commission are submitted to a jury of doctors meeting in Salem who decide what is fair, and their decisions are always universally accepted.

Mr. Jaureguy: That will be all.

Recross Examination

By Mr. Marcus:

Q. One question, since you mentioned the Industrial Accident Commission. It is true, isn't it, that they require prior authorization, as well as from prepaid medical care organizations, with respect to major cases? A. My dear sir, no, because, if a man has his throat cut in a piece of

machinery and is going to die, I don't write a letter to Salem to get authority to handle the case; or if there is somebody with a ruptured gut or a compound fractured leg—you are the doctor; go ahead and do your work the way you think you ought to do it and then talk to them about it.

1580 Q. Are you talking about an emergency or are you talking about major surgery, major cases generally? A. I am talking about major surgery involving industrial accident cases, which is the question you asked me, sir.

Q. I want to get this clear. Are you stating now that no prior authorization is required from the State Industrial Accident Commission for major surgery cases, whether they are emergency cases or not? A. Oh, for non-emergency, you get authority, yes.

Q. Your answer is corrected to the extent that you have mentioned, then, isn't that so? A. Yes.

Q. You think if someone came to you with his throat cut, while under a National Hospital Association contract, you could not operate on him and expect to be paid by the National Hospital Association without getting prior authority? A. It has been twelve years since I dealt with the National Hospital Association.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

The Court: Who will be your witnesses tomorrow? We are about at quitting time, anyway.

Mr. Jaureguy: Dr. Lehrbach, Dr. Rankin and Dr. McKeown.

1581 The Court: You do not need to continue now, unless you want to. We only have three or four minutes.

Mr. Jaureguy: We thought we might do as Mr. Marcus has done—with all due respect to him. I thought with these exhibits I wanted to read into the record I could take a few minutes, and I thought I would use that time.

The Court: Maybe we can hear more than three men tomorrow.

Mr. Jaureguy: I named three, but we have others coming here. I am not sure I can give you their names offhand, but we will have plenty for tomorrow.

The Court: I am thinking of them. They like to get set for the trial tomorrow and get the names. That is the way they work.

Mr. Jaureguy: We have got a couple we expect from Eugene.

The Court: Give us their names.

Mr. Jaureguy: Dr. Kent and Mr. Baker.

The Court: Give us the first three now again.

Mr. Jaureguy: McKeown.

The Court: From where?

Mr. Jaureguy: Dr. McKeown, from Coos Bay; Dr. Rankin from Coquille, and Dr. Lehrbach from Roseburg, and those two from Eugene.

The Court: When do we begin to have some of the Portland big shots?

1582 Mr. Jaureguy: What we did was, we thought we might have seven or eight a day, so we took four or five from out of the city and the rest from Portland.

The Court: I know your strategy, what your strategy is, but I am wondering—

Mr. Jaureguy: I hesitate to distinguish between big shots and little shots among doctors, but I will say Friday we might have some.

The Court: Very well.

(Thereupon, at 3:57 P. M., an adjournment was taken until the following day, Thursday, January 26, 1950.)

1583 Court reconvened at 10:00 o'clock A. M., Thursday, January 26, 1950, pursuant to adjournment.

Mr. Jaureguy: I may say, your Honor, Dr. Kent and another witness from Eugene that I named yesterday will not be here. We have found other doctors who are in town. Dr. Kent went back to Eugene.

The Court: Will you give Mr. Cohen and his colleagues their names?

Mr. Jaureguy: Dr. Smiley and Dr. Parcher.

The Court: Of what county?

Mr. Jaureguy: Clatsop County, in Seaside.

Dr. Lester M. Lehrbach was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name? A. L. M. Lehrbach.

Q. Where do you live, Doctor? A. Roseburg, Oregon.

Q. You have been there how long? A. Since '14;
1584 that is thirty-five years.

Q. What is your business or profession? A. Physician and surgeon.

Q. You have practiced how long? A. Since '07; forty-three years.

Q. What medical school did you attend? A. Northwestern University Medical School, Chicago.

Q. You had a period of internship? A. Yes. I took my internship at St. Francis Hospital, LaCrosse, Wisconsin.

Q. Did you go direct to Roseburg? A. I finished in '07 and went to Junction City, Oregon, in August, and I have been in Oregon since that with the exception of about three years when I took some postgraduate work and was with the clinic at Twin Falls, Idaho. That was in about '20.

Q. I wonder if you could speak a little louder? I am having a little difficulty and trouble hearing you. A. From about '23 until '26 I was in Twin Falls, Idaho, with the Twin Falls Clinic. The rest of the time I have been in Roseburg.

Q. Is your practice a general practice, or do you specialize? A. General and surgery.

Q. During the time you have been practicing at Roseburg, have you ever treated patients who were members of commercial hospital associations?

1585 Mr. Marcus: Just a minute, Doctor. Your Honor, I would like to make the same objection with respect to the testimony of this witness relating to his experiences with hospital associations as I made with respect to that of Dr. Durno.

The Court: The ruling will be the same. The testimony will be admitted subject to the objection.

A. Yes, I have worked some for commercial organizations.

Mr. Jaureguy:

Q. Could you give us generally the period of time that you treated patients who were members of those organizations? A. Well, more or less all the time. I don't remember just when they started working in our territory,

but I would say about '15 or '16 and to—just after the war. I don't know when that was. Then I broke off taking commercial tickets.

Q. Is that the second World War or the first? A. The second.

Q. Would you give us the reasons why you quit taking tickets of those organizations? A. Well, I think the chief reason was because I had so much trouble with them, so many difficulties in trying to keep the work straightened out and collecting my bills, and at the time we were very busy and I did not feel it was very profitable to do this work for them and not get paid for it, and have to lay out a good deal of money to hire somebody to take care of the correspondence, pay lawyer's fees and that
1586 sort of stuff, trying to get my money from them, so I just quit taking tickets.

Q. Did you have any experiences with them in interfering with the doctor-patient relationship or directing you what to do or when to do it? A. It has always been one of my chief objections to that type of practice, the layman interference between the patient and doctor.

Q. Can you be more specific as to the manner in which they interfered with your relationship? A. Well, the records—for instance, they seemed to feel that your records belonged to them instead of yourself, and were continually asking for information which took up a lot of time to dig out and give to them, and they required you to send in all X-rays so that in the future, if your patient came back to you, you didn't have the X-rays to refer to—never in your file. If you got certain types of cases, you would have to write in and get permission to go ahead and do the work before they will allow the cost. Of course, you can go ahead and do it, but they don't allow it unless they see fit, and there were various things of that sort which made it very disagreeable to try to carry on such a practice.

Q. What about the matter of tests? This authorization, was that confined to operations, or did that extend to tests and examinations and things of that kind? A. Well, tests and examinations. They gave me to understand
1587 that they want you to make a thorough examination always and make all the tests and if you took an X-ray picture or if you did a test and they did not think it was absolutely necessary they would not allow you anything—they would not allow you any fees for that; so it came to a point where you pretty near had to ask them permission to make all sorts of tests to be sure you were

going to be reimbursed for your trouble and your expense on it.

Q. What is a GI test? A. Gastrointestinal test?

Q. Yes. A. It is an X-ray picture with opaque meal of the stomach, bowels and intestinal tract.

Q. Did they require authorization for that type of test? A. Yes.

Q. Did you ever have any controversy or discussion or correspondence with them with respect to fee schedules? A. Oh, I had—I think we had some correspondence and quarreling about the fee schedules. The fee schedules were very low, to begin with, and quite often they would not allow bills that were based upon their own fee schedules. They would discount them oftentimes.

Q. Was your refusal to take tickets, was that your own decision or was that something that was told to you
1588 by some medical society? A. No, that was my own decision.

Q. Since you have refused to take tickets, how do you handle the cases? A. I handle them as private patients, the same as any other private patients, and at the end of the service I render them a bill and they pay the bill and then they have the privilege of turning the ticket in for reimbursement if they wish to do so.

Q. Do you accept checks written by hospital associations? A. I accepted some checks that were made out to the individuals; yes, sir. If the bill is paid in full, I will take the check, anything that is legal tender, but if the bill—if it is for part of the bill, I have refused to accept any checks.

Q. Do you know whether there are any doctors in your county that do take tickets? A. I am not sure. I think there are.

Mr. Marcus: I object, your Honor, on the ground it must be hearsay.

The Court: Not necessarily. Ask the question again.

Mr. Marcus: Let him state the foundation, then.

The Court: You are telling me?

Mr. Marcus: No, I am asking that he be required, that defendants' counsel be required to lay the foundation.

Mr. Jaureguy:

Q. What do you know about other doctors, whether any of them do or do not take tickets, in your county?
1589 A. I think Dr. Wade takes tickets. I don't know how generally, but I know he has taken one or two.

Q. That is the only one you know about? A. That is the only one I am sure about.

Q. Were you always permitted to take care of these patients from beginning to end or at some times did you have to remove them and have them sent up to Portland? A. Well, on several occasions cases were, as I say, taken away from me—that is about what it amounted to—and sent to Portland. Then in some cases they were removed without my knowledge.

Q. Without consulting you? Without consulting you they took them from Roseburg and brought them up to Portland? A. I discovered one morning when I went to the hospital they had removed two cases, when I did not even know they were gone. I went over to take care of these patients and they had been removed to Portland. They didn't even notify me of it.

The Court: Why would the hospital permit that?

A. That I can't answer. I tried to find out.

Mr. Jaureguy:

Q. You tried to find out and you couldn't find out? A. The hospital seemed to be rather on the defensive in the deal. They said that the ambulance came in there and picked the patients up and they did not know what to do. That is the way they got out of it.

The Court: What type of cases were they?

1590 A. Both of them were surgery, accident cases.

The Court: They were both ambulance cases?

A. Both emergency cases. They came in the afternoon before.

Mr. Jaureguy:

Q. When you did send in your bills to the hospital associations—what was the fee, for instance, for an office call? Do you recall? A. You mean the fee they allowed.

Q. The fee you would send in and what they would pay? A. At that time our fee was $5.00.

Q. $5.00 for an office call? When was that? A. That was along during the war.

Q. What was it before the war? A. Oh, well, it depends a little on the time. I can remember when our office fees were two and a half, two and two and a half. I think they

gradually went up during the war. Of course, they looked rather high. The average fee was $5.00 for the first call and $3.50 to $4.00 for the second call.

Q. Is that National or is that OPS? A. That was my own fee.

Q. Your own fee? A. Yes.

Q. I am asking you now about the fees that you were paid from National? A. Oh, National?

Q. Yes. A. They were $1.00. I think they were
1591 $2.00 for the first, two or two and a half for the first call, and a dollar for subsequent calls.

Q. When you send in bills for those fees, did they always pay them? A. They didn't always pay them in full. Sometimes they would have some excuse to cut them.

Q. I want to hand you Defendants' Exhibit No. 2739, consisting of correspondence by you and somebody else with the National, and ask you generally to explain the case and what it was about and what happened to it. First, I will ask you if you recall that case? A. I think that was in regard to these cases that I referred to, the accident cases. One was a compound fracture involving the ankle and tibia and fibula, just above the ankle. The other was an enucleation of the eyeball.

Q. Those two cases you are referring to, when they took them out from Roseburg to Portland, you had already started treatment, had you? A. Yes. I considered they were my cases from there on.

Q. When was that? Can you tell by that correspondence when that was? A. According to this, that was about the latter part—or the summer of '44, I believe, or '45. This letter was written in August, '46.

1592 Q. I take it from your correspondence you had some trouble collecting fees in these cases? A. I had not gotten any money up to this time.

Q. What do you mean, "this time"? A. When this letter was written I still hadn't gotten any money.

Q. At the date of that letter? A. Yes, 1946, August 15th. I think the work was done in 1944, the summer of '44.

Q. You retained this attorney who wrote those letters trying to collect for you? A. Yes.

Q. Will you tell us about when you retained him? One of these letters will show, I suppose. A. Well, I think he put in about a year altogether working on this, or possibly a little more, trying to get some sort of a settlement out of them, and it was in March of '45 I think when the first correspondence started here. I don't remember the exact

date of the accidents here, but it would be then at least a good year before the attorney started to work on it, and I think he worked on it pretty near a year or better.

Q. When the attorney started to work on it, had you stopped taking tickets or were you still taking tickets then? A. No, not when the attorney worked on it, because after that case I thought that was sufficient culmination for a break, so I stopped taking their tickets
1593 altogether. I was taking some Industrial Hospital Association tickets for a while after that, I think for about a year, and then I stopped taking them because we began to have the same situation developing.

Q. Were you ever paid anything on these cases? A. We made a settlement on it.

Q. What was the total of your bills on these cases? A. Well, the total of the bills was—I think they totaled about $300 and we finally compromised, I think, on $225.

Mr. Jaureguy: You may take the witness.

Cross-Examination:

By Mr. Marcus:

Q. Doctor, are you a member of the local county medical society down there? A. Yes.

Q. The Douglas County Medical Society? A. Yes.

Q. How long have you been a member? A. Oh, since its organization in about 1928.

Q. Have you ever been an officer? A. Not of that Society.

Q. Have you ever been an officer of any medical society? A. I was President of the Southern Oregon Medical Society.

Q. Has that been since 1936? A. Yes. That was after the war.

1594 Q. Have you ever been on any of the committees of the Douglas County Medical Society? A. No, with the exception of possibly some unimportant committees like entertainment or something of that sort.

Q. Have you ever been a delegate from that county medical society to the State Society? A. No.

Q. Have you ever been an officer of the State Society? A. No.

Q. Or on any of its committees? A. One committee; last year I was on a committee for investigation and study of the various forms of doctor-sponsored—What do you call them?

Q. Prepaid medical care? A. —prepaid medical care plans throughout the various states.

Q. Now, Doctor, are you a participating physician of OPS? A. I have stock in the association.

Q. And since when? A. About '46, I believe it was.

Q. Have you ever been an officer or director? A. No.

Q. Of that organization? A. No.

Mr. Jaureguy: I would like to hear some of this
1595 testimony. I would appreciate it.

Mr. Marcus: Will you kindly speak up, Doctor.

A. I will try to.

Q. What you have is natural trouble and I have unnatural trouble, I guess.

The Court: Do you want to go over in the jury box?

Mr. Jaureguy: No. I think I will stay here. I have got a lot of records here that I may want to refer to.

Mr. Marcus:

Q. I want to ask you a number of questions with respect to your difficulties with these associations, but, first, I want to know whether you are referring to the National Hospital Association or other hospital associations as well? A. My trouble chiefly was with the National Hospital Association.

Q. Doctor, among other things you mentioned you had to get authority for GI tests. Within the past five years, having had a series of those tests myself, I regard myself as an amateur authority on those tests.

In your opinion, Doctor, if someone had, we will say, four of these tests within a year, a prepaid medical care organization might feel, might properly feel concerned, at least sufficiently so, to require prior authorization? A. Well, I expect they would.

Mr. Jaureguy: What did you say? If you had four during the year?

Mr. Marcus: Yes. A. You mean four separate
1596 examinations?

Q. That is right. There is nothing unusual in any prepaid medical care organization requiring authority before it pays for those tests, isn't that right? A. Practically all the commercial organizations require that.

1597 Mr. Marcus:

Q. Well, authority is also required under the

OPS regulations, is it not? A. Well, we have never had to write in for authority on that. We go ahead and do the work and give them our reasons for doing it and it's always been satisfactory.

Q. You don't know whether under the regulations you are supposed to get authority? A. I have never gone into that phase of it, no.

Q. Now, among other complaints, apparently is the matter of having to send in X-rays. Now, yesterday we had Dr. Inskeep on the stand. Have you ever heard of Dr. Inskeep? A. I know him, yes.

Q. Well, Dr. Inskeep testified that he thought it was quite regular and quite proper for any prepaid medical care organization to require X-rays to be sent in. Do you—

Mr. Jaureguy: I don't recall that as his testimony.

Mr. Marcus: I do.

Mr. Jaureguy: I know you do, but I don't. I just want the record to show that is my recollection.

Mr. Marcus:

Q. Do you think there is something improper on the part of the prepaid medical organizations to ask that X-rays be sent in? A. I think it is improper for any lay organization to demand and keep the records in each case. The records should belong to the physician.

1598 Q. I am asking, do you think it is improper for a prepaid medical care organization to ask for X-rays? A. I do.

Q. You don't know whether any of the doctor-sponsored plans require that X-rays be sent in? A. None that I know of.

Q. Now, you say you had some trouble with the National with respect to fees from time to time. I assume in some instances that the trouble arose with respect to coverage, did it not?

Mr. Jáureguy: I will have to ask the reporter to read the last part of that question.

(Last question read.)

A. You mean by that whether the case would be properly covered or not?

Mr. Marcus:

Q. Sometimes— A. Oh, yes, those cases arise always.

Q. And in some instances when you pressed the matter they paid you in full and I suppose in some instances they did not, is that not true? A. Well, usually where there was a dispute we never got paid in full.

Q. Didn't you take it up with them? A. You mean discuss it with them?

Q. Yes. A. Well, yes, we used to correspond
1599 considerably about those things.

Q. Now, Doctor, I believe that you stated that you made up your own mind to withdraw from dealing with the National Hospital Association. A. Yes.

Q. Doctor, I have here Exhibit 1408, which is a letter from your office to a Mr. Gordon Watson, dated October 9, 1948, and it says that doctors do not accept National Association slips. You pay the bill personally and then we give you a receipt that you send in to the National Hospital and they refund your money to you, so please send me a check by return mail.

Is that your understanding of the general practice of the doctors in that area? A. Well, I don't know about the rest of them, but I understand that the majority of them are not taking the tickets. Whether they do or not I haven't any proof.

Q. And that is what was meant to be conveyed by this letter? A. Evidently.

Q. Now, Doctor, you have referred to fees of the National. I think you said something about $2 for the first call. That was some time prior to the war, was it not? A. That was until—yes, until after the OPS came into the territory.

Q. Now, Doctor, you have mentioned, I think, two instances where patients of yours were taken from
1600 the hospital in your locality and sent to Portland.

Now, Doctor, you know, don't you, that those cases were sent to Portland at the request of the Roseburg Lumber Company? A. I understand they were.

Q. And isn't it true, Doctor, that the facilities for treatment of serious cases are much superior in Portland than in the Roseburg area? A. That depends on the type of case, and it is quite a debatable question.

The Court: How did the lumber company know those people could be moved?

A. They didn't make any inquiries, if that is what you mean; simply sent the ambulance over and took them out.

Mr. Marcus: Your Honor, that is purely speculation. I suppose they considered he would get better treatment in Portland.

The Court: That wasn't my question, as you so often say. How did the lumber company know that those men could be safely moved?

Mr. Marcus: Your Honor, I can only suppose that they checked with the hospital, local hospital before—

The Court: How does the hospital know when a man can be safely moved?

Mr. Marcus: Well, your Honor, I am not—I know nothing about the particular case. All I brought out is that it was not the National Hospital Association. The
1601 inference was given by this witness—perhaps unknowingly—that it was the National Hospital Association that insisted on these men being sent to Portland. I am merely bringing out that the Roseburg Lumber Company wanted them sent into Portland.

The Court: Who sent the ambulance, Doctor?

A. Well, the only explanation I got of it was that Roseburg Lumber Company called National Hospital and they said to send them into Portland, so that was the authority that they gave to the hospital for taking them out. That was the only authority that had been given that I know of.

Mr. Jaureguy: Could I interrupt. He used the word "they". I don't know whether he meant the Roseburg Lumber Company or the National.

A. The Roseburg Lumber Company called the National Hospital—that is, Mr. Ford, who is the boss—

The Court: How serious were the injuries?

A. They were both pretty serious. One was a rather severe compound fracture with quite considerable shock when he was brought in.

The Court: Do you think it was wise for them to be moved at that time?

A. Not at all.

Mr. Jaureguy: I didn't get my explanation, if you don't mind. He used one word that I want cleared up. I don't know yet whether it was the Roseburg Lumber Company that told the National to send them to Portland or
1602 the National told Roseburg Lumber Company to send them into Portland.

A. My understanding was they called the National and explained these cases and the National sent them to Portland. Now, whether that is true or not I don't know. That is just the explanation I got.

Mr. Marcus:

Q. Let's get back to that. Isn't it your understanding that it was the Roseburg Lumber Company that suggested they be sent to Portland? A. I don't know whether they suggested it or not.

Q. Now, do you know who treated this patient who—I don't want to refer to him by name, so let me see if I can describe his injuries. He had a concussion and trouble with his ankle and other things. Do you recall the particular case? A. Yes.

Q. Do you recall who treated him in Portland? A. I never could find out.

Mr. Marcus: I would like this marked.

(Sheaf of correspondence, the first letter of which is copy of letter by National Hospital Association to Drs. Dillehunt & Lucas, dated June 4, 1945, was thereupon marked for identification Plaintiff's Exhibit No. 2060.)

Mr. Marcus:

Q. Now, Doctor, I am reading from Plaintiff's Exhibit marked for identification—

1603 The Court: If you have to read that whole file, let's put it off. He can read it at intermission.

Mr. Marcus: I just want to refer to one letter in it.

The Court: Tell him which one it is.

Mr. Jaureguy: I will waive now if I can have an opportunity to see it before this witness leaves the stand.

Mr. Marcus:

Q. I am reading from Plaintiff's Exhibit marked for identification 2060. This is a letter of November 11, 1944 in connection with this case that I have just been referring to. It is written to the State Industrial Accident Commission and it is written by Dr. E. G. Chuinard.

The Court: Is this about one of his cases?

Mr. Marcus: That is the case we are talking about.

The Court: Why do you read a Chuinard letter?

Mr. Marcus: Because he questions the treatment that was afforded this patient in Roseburg.

The Court: Dr. Chuinard does?

Mr. Marcus: That is right. I would just as soon leave it here without reading it.

The Court: Yes. There is no need to read it.

Mr. Jaureguy: Dr. Chuinard is available to testify.

Mr. Marcus: May I have this marked.

(Sheaf of correspondence, the first letter of which is dated March 13, 1945, by Dr. Lehrbach to National
1604 Hospital Association, was thereupon marked for identification Plaintiff's Exhibit No. 2061.)

Mr. Jaureguy: Well, I will say the same thing about this that I did about the last one, that I don't want to take the time to read this entire exhibit now. I hadn't seen it before, either one of these.

Mr. Marcus:

Q. Now, Doctor, this consists of, this Plaintiff's Exhibit 2061, consists of a sheaf of correspondence between you and National and between National and the Roseburg Lumber Company. The first is a letter from you.

The Court: What case is it about?

Mr. Marcus: Well, this is one of those same—two cases he has been talking about.

The Court: At different times?

Mr. Marcus: Well, around the same period, March 13th, 1945—

The Court: These people were taken to Portland. Is that one man or two men, Doctor?

A. There were two of them.

The Court: At the same time?

A. At the same time.

The Court: Is this one of those two men?

Mr. Marcus: That is right.

The Court: Then it was one occurrence?

A. One occurrence.

The Court: Yes. All right.

1605 Mr. Marcus:

Q. Well, this first letter is from you to the Na-

tional Hospital Association and is a letter dated March 13, 1945 in which you state that when you were called on an emergency of the type of these cases you expect to have charge and responsibility of these cases to their conclusion except such a possibility that you may desire to refer a case later. "Accordingly I figure the fees for these cases on OPS or SIAC schedules and make a charge therefor for the conduct of such case. If for any reason these cases are removed from my care without reason or without my consent I still maintain the charge."

In other words, for these cases, Doctor, although you gave them first-aid treatment you were asking for payment as if you had fully treated them, is that not so? A. when I do the work I don't feel that it is right for the case to be taken away and the other fellow get the fee for doing the after care.

Q. Well, the answer to my question is Yes? A. Yes.

Mr. Jaureguy: The question talked about first-aid. This witness hasn't said that what he rendered was first-aid.

Mr. Marcus:

Q. There is a letter from National to you stating that in your letter you had asked for the names of the doctors who had treated these patients and giving those particular names, and then stating that, "In answer to your
1606 reference to these cases being treated in Portland, the National Hospital Association did not remove the cases to Portland as you imply, but we believe you will agree that the condition of both cases was of such nature as to suggest the attention by specialists, and while we feel you did all you could in the short time these men were under your care we have wondered why consultation was not requested while they were in Roseburg and while Dr. Seely, who is a qualified specialist, was not called to attend (patient) injury to his eye."

Now, there is another in which they question with respect to one of these cases, your report having been made in attendance from 4:39 to 8:45 in the afternoon on September 21 and making a charge of $200 and including in your charges repair of three joint tendons, and then it is said, "But the orthopedist who attended this patient in Portland stated that you sent a note with the patient stating that you had made no attempt to repair the tendons," and then there is a similar remark made with respect to a report as to the other patient who suffered an eye injury,

and it is stated, "You itemized your services as repair treatment of multiple body lacerations and puncture wounds and include enucleation of the right eye, but it is said in a statement from the eye specialist, 'However, we find the report that the eye was removed on December 14, eight days after he entered the hospital here.'"

And now, Doctor, in view of all that I have read
1607 do you think it was improper for the National Hospital Association to take up with you the question of what your ultimate fee should be in these cases? A. I do. You haven't read it all yet.

The Court: Take this witness off. It is dragging too much. Apparently neither one of you are ready to examine him. Put another witness on, Mr. Jaureguy.

(Witness temporarily excused.)

Mr. Jaureguy: Dr. McKeown.

1608 Dr. Raymond M. McKeown was produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Is your name Raymond M. McKeown? A. Yes, sir.

Q. And where do you live, Doctor? A. Coos Bay, Oregon.

Q. You have been there how long? A. Since 1936.

Q. And what is your business or profession? A. Physician and surgeon.

Q. And you have been a physician and surgeon how long? A. Since 1929.

Q. And where did you obtain your medical education? A. At the University of Toronto, Toronto, Canada.

Q. Then did you have an internship after that or post-graduate work? A. I had six years at Yale University at New Haven, Connecticut.

Q. A hospital at the University? A. Yes, New Haven Hospital, Yale University.

Q. And then you have practiced your profession after that where? A. I went directly from there in 1936
1609 to Coos Bay.

Q. Are you a member of the Coos County Medical Society? A. Yes, sir.

Q. State Medical Society? A. Yes, sir.

Q. And the American Medical Association? A. Yes, sir.

Q. Now, at the time you went to—we will call it Coos Bay, although the name then was Marshfield— A. That is right.

Q. At the time you went to Coos Bay was there an organization known as the Coos Bay Hospital Association? A. There was.

Q. And who composed the Coos Bay Hospital Association? A. At that time four local doctors, Drs. Simpkins, Peacock, Rowell and Russell Keizer.

Q. And how did it operate by way of whether there was what we call an open panel or whether merely those four doctors took care of the patients? A. Largely the four doctors took care of a majority of the cases. The other doctors were permitted to work for them.

Q. And a person who had a contract with the Coos Bay Hospital Association, could he go to any doctor he wanted to in the county or was he restricted? A. He was somewhat restricted. Not entirely so. In so far as possible the men were treated locally. If they went elsewhere
1610 they were treated by suffrance more or less.

Q. And did that situation change at some later time? A. Yes. It became so bad finally due to the opposition of the doctors who were not owners that after a joint union meeting, AFL-CIO, who insisted that it be open to all doctors—

Q. Were you present at that meeting? A. Yes, sir, I was.

Q. And then when they made that insistence, then what happened? A. We had a County Medical Society meeting and a Hospital Association meeting of those four members. I reported the findings of this union meeting that I had attended and told them the union insistence was that the thing be thrown open to all doctors. The owners finally agreed to sell shares to all doctors members of the County Society, which was done.

Q. Was that members throughout the county? A. Any member of the Coos and Curry County Medical Society could become a member of the hospital association.

Q. And then did some of the doctors become members? A. All members at that time became members, that is members of the County Society became members of the Hospital Association.

Q. You mean throughout the county? A. Yes, sir.

Q. Down in Coquille? A. Coquille, right down in Curry County, right to the California line.

1611 Q. Well, about when was that? A. I am not sure, sir. I think around 1940 or thereabouts.

Q. I am wondering—I want to ask you if there wasn't a period of time there when the—after it opened up—where the doctors in and around Marshfield, Coos Bay and North Bend, were members and a little later time those in Coquille and Bandon? A. You are correct in that. I am wrong in my statement in one substance, and that is that they had the opportunity to come in but they didn't so desire at that time. They came in later.

Q. There was an intermediate step there? A. Yes, I was wrong in my statement there.

The Court: Did this involve ownership of a hospital too?

A. No hospital ownership, sir.

Mr. Jaureguy:

Q. Then you think that was about 1940? A. I believe. I am not too certain about that. I think the record will show it.

Q. And at that time was there also a system of prepaid medical care down in Coquille, I mean from doctors in Coquille? A. There were several that were in the group. There was a group in Coquille Valley, approximately 18 to 20 miles away. I am not too certain of the name—Coquille Hospital Association will do. They operated a plan there. And a short distance further on at Myrtle

1612 Point there is another plan. There were several plans around at that time.

Q. Operated by doctors? A. Operated at that time entirely by doctors.

Q. Then we have gotten up to 1940. Then at some later date was there a consolidation, or did the Coos Bay Hospital Association enlarge its activities or something of that kind? A. Yes, the Coos Bay Hospital Association then expanded, on the request of the other doctor owners of the other hospital associations. They requested incorporation in the Coos Bay Hospital Association. On their request they were consolidated, the whole thing operating as one unit.

Q. Could you tell us about when that was? A. Oh, that might have been two or three years after the sale by the

four doctors to the county members, in other words, around 1942, along in there. I am not too sure of the dates.

Q. Well, now, is it with respect to when the OPS started active operation, when was it? A. It was prior to their establishment.

Q. Was there any question raised at that time about whether the doctors wanted the Coos Bay Hospital Association or wanted OPS? Was that question discussed? A. The Coos Bay Hosital Association operating over in the Coos Bay district—at that time they were in operation, as I pointed out a moment ago, there were other groups in the county. When the other groups requested to be
1613 incorporated into the Coos Bay Hospital Association they had a choice at that time, we were told, of joining up with the Oregon Physicians' Service, OPS, or coming in with our group. They decided voluntarily on their own request to join up with us and not come in with OPS.

Q. Now, you have given us the various stages of the Coos Bay Hospital Association. When did you become a member of the Coos Bay Hospital Association? Was it the first step or the second step? A. The Coos Bay Hospital Association?

Q. Yes. A. I became a member at the time the four owners sold their interest to those who desired to purchase it.

Q. Following that union meeting you mentioned? A. That was following the union meeting, very shortly after, a matter of a few weeks after the union meeting.

Q. And have you been a member since? A. Yes, sir, I have.

Q. And still are? A. Yes, sir.

Q. And during your practice down there have you had occasion to treat patients who were members of commercial hospital associations?

The Court: We will take the morning recess, Gentlemen.

(Witness temporarily excused.)

(Short recess.)

1614 Dr. Lester M. Lehrbach, a witness produced on behalf of Defendants, thereupon resumed the stand and further testified as follows:

The Court: Mr. Marcus had not finished his cross examination.

Mr. Marcus: Yes, I had, your Honor.

Mr. Jaureguy: You had finished your cross examination?

Mr. Marcus: Yes.

Redirect Examination

By Mr. Jaureguy:

Q. These tendon repairs, this tendon repair business, did you repair these tendons before he came to Portland? A. Yes.

The Court: Did he write a letter?

Mr. Jaureguy:

Q. Did you write a note? A. I don't recall writing any note to this man. I might have.

The Court: That letter said the note came along with the body.

Mr. Jaureguy: I know that.

The Court: And you said he didn't know they were removed, so how can you reconcile those things?

Mr. Jaureguy: I don't.

The Court: Ask him.

Mr. Jaureguy:

Q. Can you reconcile the two? A. Not very well
1615 because I don't remember writing any note. I don't recall that I knew the man was gone, to tell the truth about it. I know I was very, very irate when I got over there, naturally would be.

Q. So you can't reconcile these two treatments, unless you have forgotten that maybe you were told before they left? A. I might have forgotten some details of it.

Q. You don't remember the high points, even? A. I didn't get a chance to see him that morning; I know that.

Q. These four GI tests that are sometimes given during a year, regardless of whether it is usual or unusual, who would you say is in the best position to determine the number of tests and the types of tests, the doctor in respect to his patient, or a layman in Portland who has never seen him? A. I would rather consider that the doctor who had charge of the case would have the privilege of requesting

whatever examination he deems necessary at any time to properly treat or diagnose his case.

Q. That is not what I asked you. I asked you who would be in a better position to determine whether tests ought to be given, the doctor or some layman in Portland? A. The doctor who is in charge.

Mr. Jaureguy: That is all.

Mr. Marcus: That is all.

(Witness excused.)

1616 Dr. Raymond M. McKeown, having previously been duly sworn, resumed the stand as a witness in behalf of Defendants, and further testified as follows:

Direct Examination: (Continued)

By Mr. Jaureguy:

Q. Doctor,—

Mr. Marcus: I was just getting on my feet to make the same objection with respect to this testimony as I made with respect to that of Dr. Durno.

The Court: The ruling will be the same.

Mr. Jaureguy:

Q. I will just ask you whether during your practice at Coos Bay you have had occasion to treat those who were members of commercial hospital associations. I don't think you answered that question. A. I did have opportunity to treat them.

Q. During any portion of that time did you take tickets and send bills in to the commercial hospital associations? A. I did, sir.

Q. Tell us the period that covered, when it started and whether it continues to the present day and, if not, when you stopped. A. I have to give this from memory, which is not infallible. I would say I took them from the time I opened my office June 1st, 1936, up to about 1940, at which time, by reason of the fact that I had joined up with what I considered my own group, I took them on a basis

1617 of cash from the patient, with the bill marked "Paid," with the understanding that he regained, then, his money from the association, the National or the Industrial.

Q. You mean he got it after he paid you? A. He paid me for my services and I gave him a receipted bill, and then they are told to bill the National or Industrial for reimbursement.

Q. What was the reason for that? A. I was completely dissatisfied.

Q. Will you go into detail and tell us the things they did, what happened that made you dissatisfied? A. I did not like the distant supervision and looking down the back of my neck to see whether I did things the way they liked them or not. I felt I had an education in medicine which many of them did not have, and that they were in no position to judge whether I was treating a case properly or improperly; and when they objected and told me I could treat a case the way they wished, I just simply told them I was through.

In the case of Industrial, after we had decided to take no more of their tickets, they went over to one of the biggest sawmills in Coos Bay, the Coos Bay Lumber Company, and posted notices throughout the mill—several notices were posted to the effect that I and three other doctors would continue to take their cases on the old basis, which was not true at all. None of us had been
1618 consulted or advised of this. This question came up before the union and the doctors, and we four doctors got up and protested and demanded that these notices be taken down. There was a great deal of pettiness that went on, other pettiness that went on, so much so that we finally decided to have nothing more to do with them.

Q. Do you remember one occasion of Mr. Bechtold being down there to explain a new type of contract that they had? A. That was more of the same, sir. Mr. Bechtold came down to a meeting of the Coos and Curry County Medical Society, as our guest.

Mr. Marcus: Am I to understand that you were present at that meeting. A. I was there, sir. I heard Mr. Bechtold.

Mr. Jaureguy:

Q. He was there as your guest, you say? A. He was our guest. I was a member of the county society and I listened to him and heard what he had to say.

He told us he was establishing, through the National Hospital Association, a family coverage plan. It was new to us. We protested and told him we thought in our opin-

ion many of our private cases would be getting cheaper medicine and we did not think that economically it was sound practice for us to engage in such a thing at that time.

The argument became quite bitter and Mr. Bechtold finally told us that he was establishing the plan and
1619 we would take it whether we liked it or not, that he was about to put it into effect and that we had nothing to say about it, that he was going to do it, and I might say that Mr. Bechtold left our meeting shortly afterwards.

Q. Was that argument on the part of all the doctors? Isn't it a fact that some of them got more heated than others? A. It became quite agitated, as one can readily see. Mr. Bechtold attempted to defend himself; and the doctors likewise. There were several doctors that became very angry, and Mr. Bechtold was finally asked to leave, which he did.

Q. Do you remember him telling one or more doctors that they would see the day when they would all be working for the National Hospital Association? A. Yes, I recall him distinctly telling that to Dr. Peacock. Peacock was a member of the group, but he addressed his remarks to Peacock particularly.

Mr. Marcus: Just a minute. I would like to strike all that out for the reason that that is information obtained from Dr. Peacock, obviously.

A. My dear sir, I sat right there and listened to it.

Mr. Jaureguy:

Q. When you take care of patients as National patients, as distinguished from your own patients, do they always let you complete the work yourself or do they sometimes take it away from you? A. They adopted the same procedure with me that they did with everybody else.
1620 I was no exception.

Mr. Marcus: Objection, your Honor. He doesn't know anything about everybody else.

A. I listened to them for a couple of days.

Mr. Jaureguy:

Q. Well, suppose you tell us what they did with you and then we will compare it with what they did with the rest and see if it is the same or different. A. They attempted to dictate how I treated my cases, and I didn't approve of

that. I can give you the details, but I don't consider them relevant, sir. What I mean by that is this: They told me when I could take GI studies; they told me when I could take X-rays; they told me when I could do surgery. I don't consider that their privilege and I never did.

Q. Did they ever tell you to send patients in to Portland? A. I don't remember any case specifically, sir, no. I couldn't say positively.

Q. Then, they did not treat you the same as they did the preceding witness. I am not sure that I asked you this: The decision you made not to take tickets, was that some decision you were told to take by some medical society, or was it your own decision? A. That was my own decision, after having attempted to work with them several years and finding it impossible to do so.

Mr. Jaureguy: You may take the witness.

1621 Cross Examination

By Mr. Marcus:

Q. Doctor, you have referred to your dealings with hospital associations. Specifically, you were referring to National and Industrial, is that not so? A. Particularly so.

Q. Doctor, did you have any dealings with Prudential? A. I couldn't state specifically. I make no exceptions. When a patient comes to me he comes as a patient of mine. I am not concerned whether they are Prudential's or anybody else's.

Q. Well, Doctor, you have made specific complaints about these hospital associations. In discussing these complaints with you, I would like to know as to what hospital associations we are dealing with.

Isn't it true that on direct examination you referred to the National Hospital Association and the Industrial Hospital Association? A. I think I thought those were the two we were concerned with.

Q. Isn't it true the Coos Bay and Curry County doctors had your own prepaid medical care organization as a result of the State Medical Society getting together and deciding to boycott these associations? A. I deny that emphatically.

Q. What offices have you held with the Coos Bay and Curry County Medical Society? A. I have held a
1622 number of them, sir.

Q. Will you kindly list them to the best of your

ability? A. Purely from memory: I have been secretary of the county society and I have been president and held various other offices.

Q. Has that been true since January, 1936? A. Yes, sir.

Q. With respect to the State Medical Society, have you held any offices? A. I have; yes, sir.

Q. Could you give us those offices? A. Again, purely from memory: I have been vice-president and I am presently the AMA delegate.

Q. Have you been on the Council of the State Society? A. I have, sir.

Q. Have you been on the Council of the State Society since January, 1936? A. Yes, sir.

The Court: How many delegates are there at a time from Oregon to the AMA?

A. Two, sir. They are allowed one for each one thousand doctors in the state.

The Court: What is their term of office; one year?

A. Two years.

Mr. Marcus:

Q. It is true, also, is it not, that there is an alternate elected at the same time? A. Each delegate has an
1623 alternate elected for the same term of office as the delegate is elected for. Of course, you can re-elect him, too.

Q. Going back to the Coos Bay Hospital Association, have you held any offices in that association? A. I have, sir.

Q. Could you give us those, please? A. I have been a director. That is about the only office we have outside of chairman.

Q. Are you a participating physician with Oregon Physicians' Service? A. I participate with the Coos Bay Hospital Association.

Q. Well, are you on the list that they put out as a participating physician? A. I don't know, sir. I can't answer without looking at the list.

Q. Have you ever held any office with the Oregon Physicians' Service? A. No, sir; I never have.

Q. Have you ever attended any of their meetings? A. I have attended their open meetings, open to every doctor in the State of Oregon.

Q. Now, Doctor, you have been quite active in State Medical Society affairs? A. That is a matter of opinion, sir, your opinion against mine.

1624 Q. What is your opinion? A. My opinion is that I have been engaged in it, but not necessarily active.

Q. You have acted as their spokesman quite a few times, have you not? Quite often? A. I think that again is a matter of opinion. I speak for myself.

Q. And what is your opinion? A. Do you want me to go into a long, lengthy discussion of that or give it very briefly?

Q. If you can give it briefly, it will be acceptable. A. I do not consider myself a spokesman for anyone except myself, unless I am so delegated.

Q. You have been designated as a representative or delegate with AMA. A. There, I speak for them; I speak for the State Society at the annual convention.

Q. As a member of the Council, I suppose you speak for the Society, also? A. Where would I do that?

Q. Well, isn't it true that the Council passes certain resolutions and takes certain actions which are supposed to be the actions of the Society? A. Not necessarily, sir; not necessarily.

1625 Q. Do you deny that they pass resolutions which are supposed to be actions of the Society? A. I don't recall any resolutions that ever did pass.

Q. You do not recall any resolution? A. They call them motions, I think, don't they?

Q. Motions? A. There is a considerable difference, I believe.

Q. I stand corrected, then. How about motions? A. They pass motions like any other organizations of a similar nature does.

Q. Would you say none of these motions are actions of the Society? A. They are actions of the Council, not necessarily applicable to the State Society. They could be.

Q. They could be? A. If they are so directed, but they have to stand authorization then from the annual convention following subsequently.

Q. During the interval between annual meetings, isn't it true that the Council is the acting body, the chief body for the Society? A. That is correct; yes, sir.

Q. Weren't you designated a few years ago or asked to oppose certain legislation which had been proposed in the state I believe by these hospital associations? A. You

will have to be more specific. I don't understand you at all.

1626 Q. Isn't it true, Doctor, that a few years ago a bill was introduced to make it unlawful for the medical societies and doctors in Oregon to combine to destroy hospital associations? A. Are you thinking of Mr. Bechtold's maneuver down at the State Legislature?

Q. I am asking you whether there was a bill introduced— A. Are you speaking of Mr. Bechtold's efforts at the State Legislature?

Q. Do you understand my question? A. I am asking for an explanation, sir, because I don't follow you.

Q. I am merely stating, as far as I understand, there was a bill sponsored in the first instance by these hospital associations which was introduced for the purpose of making it unlawful for the doctors in Oregon to combine to destroy these hospital associations.

The question I asked you is whether or not you were not requested by the State Society to take certain action with respect to that proposed legislation? A. I simply can't answer you. Your question is entirely too vague.

Q. Let's see if we can tighten the question up. Do you understand me when I say that I understand that legislation was proposed, a bill was proposed in the State Legislature? Do you understand that? A. No, I don't

1627 follow you. You say a bill was proposed in the State Legislature. What Legislature are you speaking of, Oregon or California?

Q. The Oregon State Legislature. A. That doesn't necessarily follow you meant Oregon.

Q. I do mean Oregon, Doctor. A. All right, sir.

The Court: That is the first time you have pronounced that correctly.

Mr. Marcus: Perhaps that is the reason I just usually refer to the state itself.

Q. You do understand me up to that point, then? A. Yes, sir, I am right with you.

Q. That bill which was introduced in the Oregon State Legislature was for the purpose of making it unlawful for doctors in Oregon to combine to destroy hospital associations? A. Well, maybe I can help you out a little bit by asking you if you mean, for my own information, that there was a bill introduced in Oregon, in the Oregon State Legislature, by the doctors as a state organization?

Q. No. I understand that this bill was sponsored by the

hospital associations. You have mentioned Mr. Bechtold, that perhaps he was behind it. If you want to think of it in terms of Mr. Bechtold's sponsorship, that is all right with me; maybe we are referring to the same bill,
1628 since we have a common meeting ground or understanding. Assuming that is the bill— A. You are trying to get me to say that the State Society wanted to break up the hospital associations in the state.

Q. No, I am not. I am trying to get you to say that you were requested by the State Society to take some action to prevent the passage of this bill. That is all I am trying to get you to say. A. I don't know what you are talking about, I am sorry. I can't get it at all.

Q. Did you take any action with respect to that bill? A. I don't know what bill you are talking about, so I can't answer the question, sir.

Q. The bill you have referred to as Mr. Bechtold's maneuvering in the State Legislature. A. I didn't refer to that as a bill. I said, "Are you referring to Mr. Bechtold's maneuvering in the State Legislature a few years back?" I referred to no bill.

Q. Let us put it with respect to Mr. Bechtold's maneuvering in the State Legislature. Did you take some action with respect to the maneuvering? A. Such as—

Q. Doctor, I am asking a question, whether you took any action at all or— A. There are different kinds of action. What kind do you mean?

Q. There is nothing hidden in my question at all.
1629 All I am trying to find out is whether the Society asked you to take some action with respect to it? A. I don't know anything about it.

Q. You don't? A. No.

Q. Doctor, I am reading from Plaintiff's Exhibit marked for Identification 2062, which is a telegram, a photostat of a telegram, addressed to Dr. Raymond M. McKeown, Coos Bay, Oregon:

"Please communicate with Senator William E. Walsh immediately, preferably by telephone, otherwise telegraph, in substance as follows: Earnestly urge you oppose senate bill four two seven. This bill sponsored by a single commercial hospital association makes it a misdemeanor subject to fine up to one thousand dollars for any person to make any contract combination or conspiracy in restrain of an hospital association."

Do you now, after I have read this, understand what I have been talking about? A. Why didn't you bring that up in the first place, so I would know what you were talking about?

Q. I was trying to get to it. A. Trying to get me to say I didn't know anything about it, isn't that right?

(Photostat copy of telegram addressed to Dr. Raymond M. McKeown, Coos Bay, Oregon, from Oregon State Medical Society, thereupon marked Plaintiff's Identification No. 2062.)

1630 Mr. Marcus:

Q. You are trying to tell me now that except by virtue of this telegram you didn't know anything about this bill? I have been talking about a bill for the last ten minutes. A. I asked you what bill it was and you didn't produce that until after you tried to get me to say what it was.

Q. Well, Doctor, let's not argue. I am asking you now whether you were requested by the State Society to take certain action with respect to this bill. A. According to the telegram.

Mr. Jaureguy: If your Honor please, could I read the entire telegram into the record at this time? I will start in where he left off: "Bill subjects physicians to criminal proceedings but gives hospital associations complete latitude"—

Mr. Marcus: Well, your Honor, I am going to object to anything in that except what I have asked the witness about in order to refresh his recollection.

The Court: That is a very old rule that when a part of a document is read the opponent may require it all to be read. That is one of the oldest rules.

Mr. Marcus: Yes, your Honor, but I don't think it obtains where the only purpose is to refresh someone's recollection.

The Court: Then we will make some new laws.

Mr. Marcus: Well, I register my objection to having it read.

1631 Mr. Jaureguy: This photostatic copy of this telegram your Honor will appreciate has just now been marked and I have not seen it.

"Bill subjects physicians to criminal proceedings but gives hospital associations complete latitude to interfere

with the practice of physicians. Doctors should not be subject to legal coercion to work for any hospital association under threat of criminal prosecution. Every physician should be free to determine for himself the organizations he wishes to serve. Robert L. Benson, M. D. Chairman Committee on Public Policy, Oregon State Medical Society."

Mr. Marcus: I just want to object to the last part merely because it is an opinion.

Mr. Jaureguy: The first part isn't.

A. We happen to practice medicine.

Mr. Marcus:

Q. Now, Doctor, were you a member of the State Council at the time the Coos Bay Hospital Association and these other local hospital associations merged? A. They didn't merge, if I understand your question correctly.

Q. Well, I am afraid, Doctor, you are imagining that I have a hidden purpose in every question I am asking. Put it in your own words.

The Court: I have been wondering if you are related to Joe McKeown, the lawyer.

1632 A. I am.

The Court: Are you brothers?

A. No. We are "umteen" cousins.

Mr. Marcus:

Q. Well, Doctor, you said something about the Coos Bay Hospital Association and the other hospital associations getting together. A. Yes. But you said the OPS merged. We didn't merge with them, and by "we" I mean the Coos Bay Hospital Association. Your question to me was was I a member of something or other—I have forgotten—at the time the Coos Bay Hospital Association and the rest and the OPS merged. Now, we didn't merge with the OPS.

Q. Well, now, Doctor, I could say or should say that I did not use the word "OPS". Let's forget that. I am just referring to the other local associations. Now, at that time were you a member of the Council? A. I believe I was, but I am not entirely positive. I think I was. I am not sure, however.

Q. Did the County Medical Society apply for approval of these hospitals, the local hospital associations, from the

Oregon State Medical Society? A. I can't answer you without guessing. I believe they did, but I am not entirely certain because I can't recall all the finer details of something that happened ten or fifteen years ago.

1633. Q. Well, I will ask you to look at Plaintiff's Exhibit 2010 to see whether that refreshes your recollection. A. I am sorry, sir, I can't read this. Is there a glass available or something? I can see my own signature to it.

Mr. Marcus: Perhaps I can read it or perhaps the gentleman next to you can read that for you.

A. Yes, I recall this whole thing. I was acting as Secretary of the County Society.

Q. Then the answer is that there was an application made to the State Medical Society for approval? A. Yes, that is right, there was one.

Q. And this letter that I have shown you is a letter asking for such approval, is it not? A. Yes, sir.

Q. And that is dated February 7, 1941. That refers to the Mast Hospital Association at Myrtle Point and the Coquille Medical Service Bureau of Coquille: Now, Doctor, it is true, is it not, that the approval of the Council was conditioned upon these associations not competing with one another geographically? A. That was considered desirable but it wasn't necessarily positive. That is mentioned in the letter there, if that is what you have reference to.

Q. Well, I will read one paragraph from Exhibit 2010. This is a letter from the Oregon State Medical Soci-
1634 ety to you as Secretary of the Coos and Curry County Medical Society, dated March 13, 1941:

"It is the understanding of the Council that each of these organizations, as well as the Coos Bay Hospital Association which the Council has heretofore approved, will limit its activities to a definite geographical area. It is further the understanding of the Council that any subscriber of any of the three organizations may receive service from any of the member physicians of any of the organizations."

Now, at that time, Doctor, you were acting in two capacities, one as a member of the Council and the other as Secretary of the local society, is that not so? A. I wouldn't know without looking at the record. I was obviously

Secretary there, but I couldn't say about the Council. I don't remember.

Q. Well, Doctor, Plaintiff's Exhibit 683 is comprised of the minutes of the Council of the State Medical Society for February 7, 1942, and you were listed as present. A. Pardon me, "present"?

Q. Yes. A. Or "president"?

Q. Present—no. I am sorry. This is not the one. A. Anyone can attend those meetings. It doesn't necessarily follow that he is present or a member of the Council.

1635 They are open to any doctor.

Q. I am not going to engage in a discussion with you, Doctor, as to the meaning of being present or being on the Council.

Now, Doctor, were you ever on the Grievance Committee of the Coos Bay Hospital Association? A. Of the Coos Bay Hospital Association?

Q. Yes. A. I don't know, sir. I would have to look at the record.

Q. Well, you will accept what appears to be a document—A. I will accept the record.

Q. Now, Doctor, you say you decided all by yourself to cease taking tickets. A. That is correct.

Q. I call your attention, Doctor, to Plaintiff's Exhibit 1582, which is comprised of the minutes of a meeting of the Coos Bay Hospital Association of August 5, 1940, and you are listed as being present, and it states that "After general discussion a motion was made by Dr. Peacock and seconded by Dr. John Keizer that this group of doctors will not take any slips from any hospital association not approved by the Oregon State Medical Society after August 5, 1940."

Now, does that alter your statement in any way? A. May I have my previous statement?

Mr. Marcus: Will the reporter please read the previous statement?

1636 The Court: Don't look back. It was that your decision not to take tickets was your own.

A. That is correct. That stands.

Q. That stands. Now, I call your attention, Doctor, to Plaintiff's Exhibit 1597 which is comprised of the minutes of a Board of Directors meeting of the Coos Bay Hospital Association for April 17, 1947, and you are listed as being present. I assume you were on the Board of Directors of that Association. A. I believe.

Q. And the following appears:

"The manager gave a brief report regarding the Weyerhaeuser Company as to their intention for a medical coverage plan for their employees when their contemplated large operations start in this area. The manager also submitted the request of Mr. R. Conklin, present executive of Weyerhaeuser operations in this area, that the local doctors accept the National Hospital Association tickets of Weyerhaeuser employees and bill the Weyerhaeuser company direct for the doctors' professional services rendered. It was generally felt that the doctors should continue not to recognize National Hospital Association tickets and continue to bill any patient carrying a National or Industrial ticket privately."

Now, Doctor, do you still stand by your former statement that your decision not to take tickets was solely
1637 a matter of your individual decision? A. It is very simple, very simple.

Q. I am asking you whether that is— A. That is very simple. Your records are very simple. You are making them unnecessarily complicated.

Q. Well, it is true, is it not, Doctor, that your Association has continued to deal on a reciprocal basis with these local associations down there, but at the same time you have refused to deal with the hospital associations directly, that is the so-called commercial hospital associations? A. Well, I think we follow with our own group, if that is what you mean to say.

Q. Well, I assume your answer is Yes then? A. Yes to what?

Q. Well— A. I am not changing my opinion of a while ago on what I said a while ago that this is my own independent private thinking, and if you are trying to make it appear there is collusion and we as a group did this, I deny the whole thing.

Q. Well, Doctor— A. Well, you had me down here on—

Q. I asked you a specific question and am trying to get an answer. A. You are asking in such a way that my answer is being distorted in my opinion.

1638 Q. Doctor, it is not uncommon for your Association, that is the Coos Bay Hospital Association, to question bills of doctors to determine whether or not they should pay those bills in full? A. I have sat on the Board of Directors for years and we never question the doctors' bills. They are paid.

Q. Now, Doctor, it is true, is it not, that at times your Association has set its fees by the fees established by the Oregon State Medical Society? A. Not entirely correct. We use them as a basis to judge our own fees, but we use the State Industrial, we use all other available fee schedules.

Q. But there have been times when you have used their fees, the fees of the State Society, as the basis upon which you have paid doctors? A. Our fees are based on the ability of us to pay. If it follows that they happen to be OPS fees, why, we use them.

Q. Well, I have asked you a question with respect to the State Medical Society. Hasn't it been true at times that you have used their fees as a basis for the payments you would make? A. You mean by State Medical Society fees, do you have reference to OPS?

Q. No, I have reference to the Oregon State Medical Society. A. I don't know of any fee schedule they have. You will have to show me one.

1639 Q. I am going to read a paragraph from Plaintiff's Exhibit 1586 which is comprised of the minutes of July 21, 1941, of the Board of Directors of the Coos Bay Hospital Association:

"Unanimously agreed that bills from outside hospitals and doctors in the case of (name of patient) be paid at Oregon State Medical Society rates."

Does that refresh your recollection, Doctor? A. No, except to repeat what I said. We used everybody's. From time to time we would use OPS; other times we would use somebody else's, basing it entirely on our ability to pay, which was the critical thing, not what OPS's was. It was a convenience, was all it was.

Q. You stated the association never questioned doctors' bills that were sent in there? A. No, not exactly. They didn't question them, no.

Q. I will read from Plaintiff's Exhibit 1582 in which it states:

"If any doctor wishes to discuss a bill with the Board of Directors, he can present a number of written questions to the Board which will take action upon it."

What do you understand by a doctor wishing to discuss a bill?

The Court: What is that from, what document?

Mr. Marcus: This is a meeting of the Coos Bay Hospital Association of August 5, 1940, and Dr. McKeown was president, according to this document.

1640 A. If I might explain to you, what that is getting at there is, some of the men thought they should receive greater fees for certain cases. The difference I attempted to point out a while ago. We used whatever moneys were available to pay these bills. We differed considerably from the commercial hospital associations in that we had no coverage, we had no high-salaried employees running around and telling the doctors what to do. We kicked that money back to the doctors. Consequently, fees varied from time to time.

If doctors did not think fees were agreeable to them, they had the privilege of appearing before the Board. At the time they appeared they laid out the whole schedule in front of them and told them probably, "This month all we can pay is $80.00 for an appendix," and last month maybe we had funds to pay $150.00.

Q. So that actually, during the course of the existence of the Coos Bay Hospital Association, there have been some and perhaps many occasions when the doctors have not received their full fees? A. Not necessarily true, sir.

Q. I understood you to say that there have been occasions where there hasn't been enough in the kitty? A. No, I said they could do that, but it never had to be done. We have paid out by reason of the fact that we haven't had these high-salaried employes running around. We
1641 have paid our scheduled fees and everybody has been very well satisfied with it.

Q. Do I understand you now to say everybody has been paid in full for this period? A. The boys down there—the doctors down there are paid their fees.

Q. When I asked you, Doctor, to explain that paragraph which I read, you said the doctors would come in there and say that they thought they ought to be paid their full fee and somebody—

The Court: No, paid more, he said.

Q. (By Mr. Marcus) Paid more than they had been paid by the hospital association? A. I said we paid on the moneys available to pay with. If they asked more, it was explained to them why there was no more available to pay with.

Q. When they came in to the Board— A. They were satisfied when they walked out.

Q. They were not satisfied when they walked in? A. They were satisfied when they walked out, which is the difference from National or Industrial.

Mr. Marcus: I move to strike that last part out.

Q. You do not deny that when they came in there they thought that their fees were worth more, that their services were worth more than they were receiving? Perhaps you were able to convince them that for the benefit of the whole group they should take less, but they came in with
1642 that idea? A. We showed them the records and on the basis of the records they were satisfied.

(Thereupon, at 11:55 o'clock A.M., a recess was taken until 2:00 o'clock P.M.)

1643 AFTERNOON SESSION

Court reconvened at 2:00 o'clock P.M., pursuant to recess.

Mr. Jaureguy: Could I inquire of your Honor whether we will have court on Monday?

The Court: Let's discuss that tomorrow. Do you need an answer today?

Mr. Jaureguy: We would like to line up the witnesses.

The Court: What are your thoughts on that?

Mr. Marcus: What is Monday? I was going to suggest this, that as far as I am personally concerned I would either rather go through, or if we are going to have a day's postponement to have it tomorrow so I could save my voice, but I have no preference.

The Court: When we adjourn Friday night we will adjourn until Tuesday morning at 10:00 o'clock. Does that answer your question?

Mr. Jaureguy: Yes, your Honor.

Dr. McKeown, will you resume the stand.

DR. RAYMOND M. MCKEOWN, a witness on behalf of Defendants, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. Marcus:

Q. Doctor, is the Coos Bay Hospital Association affiliated with the Oregon Physicians' Service? A. Not directly.

1644

Q. It is affiliated with it though, is it not? A. I would say No.

Q. Now, Doctor, I have here Exhibit 3, which is a pamphlet of the Council on Medical Service of the American Medical Association and entitled "Voluntary Prepayment Medical Care Plans," and on page 61 it says with reference to the Oregon Physicians' Service: "Four county plans continue to operate as local plans but are affiliated with the State plan. These four local plans are"—and No. 3 is the Coos Bay Hospital Association.

Now, you have no reason to quarrel with that, have you? A. I do. That isn't a true statement of facts.

Q. Well, in the foreword to this same exhibit it is stated that "The data contained in this report has been obtained directly from the plan executives." A. May I have the date on that pamphlet?

Q. That is 1947. Would you like to look at it? A. I would, please.

Q. At the clipped pages you will see what I have just read. A. "Affiliation" means a different thing apparently to me than is suggested in that article. We consider

1645

ourselves independent.

Q. Well, you have an agreement with OPS as to the division of territory down there, don't you? A. I don't think there is anything like that in writing.

Q. Well, it is understood then, is it not? A. Possibly.

Q. Now, Doctor, I believe you stated that among the things you didn't like about dealing with the National and Industrial Hospital Asociations was this matter of getting their authorization, is that right? A. I believe that is correct.

Q. When you were referring to getting their authorization you didn't mean to infer that that was so with respect to emergency cases, did you? A. No, sir, I didn't.

Q. Well, I call your attention, Doctor, to Government's Exhibit 114, which is a special full coverage agreement of the Coos Bay Hospital Association and that provides among other things that emergency treatment does not include surgical operations except when specifically authorized by the Association. It would appear then that your Association requires authorization even in emergency cases where

it involves surgical operation. A. How old is that contract?

Q. That is 1937. A. That contract has long ago been abandoned. You have an old contract.

1646 Q. Now, Doctor, this morning we discussed briefly this matter of not getting full payment for fees, and I asked you about your association, and I believe you said that your association did not cut down fees on the basis of questioning what the doctor asked for, but that on the basis of what monies there were avaliable fees were at times cut down and that the doctors would come in perhaps dissatisfied but would go out satisfied; is that correct? A. With a smile on their face.

Q. Doctor, I am now reading from Exhibit 1596, which is the minutes of the meeting of the Board of Directors of the Coos Bay Hospital Association, February 25, 1946, and it is stated there that "under unpaid bills the manager presented a statement in the amount of $582.75 for professional services rendered a Mr. Frank A. Cox. The manager's investigation showed that the patient had never been treated for the ailment the statements were rendered for, and at the time the patient was confined he was not a subscriber, having not paid dues for four months. Dr. Lucas, the patient's physician, was called on to give his explanation of the case and treatment rendered. Dr. Lucas gave the following report"—and then there is a long paragraph which deals with Dr. Lucas' report. And then it is said, "Considerable discussion was carried on as to whether the Association was responsible for payment of statements rendered. Because the patient had not paid dues

1647 and that the case could not be considered continued because of no previous treatment for CA being rendered it was the opinion of the Board members that the Association was not responsible for payment for services rendered."

Is that an instance, Doctor, where a doctor came in dissatisfied and went out with a smile on his face? A. What is wrong with that?

Q. I am asking you. A. I am asking you what is wrong with it. It is according to the terms of the contract. What is wrong with the decision of the Board?

Q. I am not questioning the decision of the Board. I merely want to find out if that is one of the instances— A. But you are inferring the doctor didn't settle things—

Q. Doctor, will you kindly try to answer the question asked you? A. But don't put words in my mouth.

Q. And don't question my meaning of the question. I am asking you now whether you consider that an instance where a doctor came in dissatisfied and went out with a smile on his face because his bill had been paid or adjusted. You don't think that doctor was satisfied, whether or not you were correct? A. I don't like the innuendo there at all.

Q. Well, am I to understand, Doctor, you are re-
1648 fusing to answer the question? A. I am not refusing to answer the question because I don't think it is appropriate or applicable here at all.

Q. Well, with all due deference to you, Doctor, that is a matter for the determination of the Court, and if a question of mine is deemed improper or objectionable counsel for the defendant may rise and object to it. Now, would you kindly answer that question? Do you think that was an instance where the doctor in question was satisfied with what happened? I am not questioning whether or not— A. I happen to know that he was satisfied. Lucas is a personal friend of mine.

Q. And you think he was satisfied with getting nothing? A. He was satisfied with the action of the Board of Directors. He subsequently became a Director.

Q. Doctor, in your Association is there any restriction with respect to referring a patient to outside physicians? A. Absolutely none.

Q. Now, Doctor, I call your attention to—May I have this marked?

(Photostatic copy of minutes of meeting of Board of Directors of Coos Bay Hospital Association of May 27, 1941, so produced, was thereupon marked for identification Plaintiff's Exhibit No. 2062.)

Mr. Marcus:

Q. Doctor, I am calling your attention to a
1649 paragraph in Plaintiff's Exhibit marked for identification 2062 which consists of minutes of a meeting of the Coos Bay Hospital Association, the Board of Directors thereof, May 27, 1941.

"Motion made and seconded that any attending physician of the CBHA referring an employee under CBHA to an outside physician must have said patient consult with any of the three doctor members of the Medical Surgical Committee, this doctor to give complete report to Medical Surgical Committee of his findings, and they in turn to

determine whether or not patient should be referred to outside physician."

Does that refresh your recollection, Doctor? A. It certainly does. That has all been changed about four or five years ago. That thing is out of date.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. In Exhibit 1586, which was read to you this morning by Mr. Marcus, one paragraph, it reads as follows: "Unanimously agreed that bills from outside hospitals and doctors in the case of (patient) be paid at the Oregon State Medical Society rates." Well, now, what is meant here by "outside hospitals and doctors?" A. Doctors and
1650 hospital associations other than those or that of the Coos Bay Hospital Association.

Q. And so this paragraph doesn't relate to the fees to be paid to the members of the Coos Bay Hospital Association? A. It has absolutely no connection whatsoever.

Q. And the Oregon State Medical Society rates. Do you know what that has reference to? A. That was merely a convenience, as I tried to point out to Mr. Marcus. We had to have some scale to use and we used that when convenient but not consistently did we use it.

Q. And what was that schedule gotten up for, do you know? A. The OPS schedule?

Q. This so-called Oregon State Medical Society rates. This was in July, 1941, before there was an OPS. A. I believe, if my memory is correct, and I am not too certain of this, but I believe that had reference to do with the medical care plans that were in operation in the State, and, as I vaguely recall, there was some sort of a state agency, some sort of state medical society committee that was cooperating with all the different prepaid plans and had formed a rather convenient schedule of fees. I think that is what that has reference to.

Q. And that is a schedule of fees to be used when a member of one hospital association is out in some other part of the state? A. Yes; because our fee schedule was
1651 not necessarily that of, say, in Eugene, the Pacific Hospital Association. Their schedule might differ considerably from ours, and in order to find a common meeting grounds I think that schedule was used.

Mr. Jaureguy: That is all. Thank you.

(Witness excused.)

Mr. Jaureguy: Dr. Smiley.

1652 DR. GEORGE W. SMILEY was produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name, please? A. George W. Smiley.

Q. And where do you live, Doctor? A. Astoria.

Q. What is your occupation or profession? A. Physician and surgeon.

Q. And would you tell us where you got your medical training? A. The State University of Iowa.

Q. And then did you have an internship? A. Yes, State University of Iowa Hospital.

Q. And when did you start practicing? A. I went into the Army in 1945 and stayed there for two years, and came out in 1947, and in private practice in St. Louis in 1947, and came to Oregon in the latter half of that year.

Q. What was the length of your private practice before you came to Oregon? A. Oh, it was a matter of a few months.

Q. Then when you came to Oregon where did you settle? A. Westport.

Q. And did you have some type of arrangement
1653 there for your practice with some organization? A. Yes. It was a rather loosely defined relationship with the Industrial Hospital Association for care of their patients who were covered in three lumber mills in that neighborhood.

Q. And did you take care of those patients, hospital members, on a fee basis or on a salary basis? A. It was on a salary basis.

Q. And did the Hospital Association let you practice according to your own diagnoses and your methods, or did they dictate to you? A. As a general statement there was very little interference.

Q. In other words, you would take care of the patients

in the manner in which you thought they should be taken care of? A. That is right.

Q. Then you were there at Westport doing that work for the Hospital Association for how long? A. Until approximately the 15th of September, 1948.

Q. So you were there a year and a quarter or some such matter? A. Approximately.

Q. Now, you say they didn't interfere with you taking care of their patients. Did they complain about other things that you did there? A. Did Industrial Hospital Association?

Q. Yes. A. Very definitely. Largely by the
1654 method of giving every support possible to the minute and trivial grievances of the private patients, that is my private patients.

Q. Can you give any illustrations of that? A. Yes. One day, quite by surprise, after I had been there a matter of three months, I was asked to come to the office of the manager of the mill. There was no warning at all what was to be discussed. I went there and was put on the carpet and faced with a number of rather ridiculous grievances that various people had brought up to the Industrial Hospital Association such as "Why did I refuse to take care of a certain obstetrical patient", a patient who was under the regular care of another physician. And, "How did I justify the fees that I was charging my private patients?"; and there was some complaint about my use of my wife as an office nurse in the evening, and the fact that I requested that appointments be made to see patients in the evenings, various things of that sort that I felt to be concerned
merely with my private practice and well within my
1655 own discretion.

Q. Well, at that time were you a member of the Medical Society? A. Oh, yes. I joined the Medical Society immediately when I came to work for them.

Q. That is, after you started working at Westport for Industrial? A. As soon as I came to Westport, as a matter of fact.

Q. That was what medical society? A. The Clatsop County.

Q. Have you continued to be a member of it ever since? A. Yes.

Q. Are you on the staff of any hospital there? A. Both hospitals in Astoria, St. Mary's and Columbia.

Q. Have you attended the Medical Society meetings regularly? A. Very regularly.

Q. Has there been any discrimination against you by reason of your working for Industrial Hospital Association? A. Not the slightest.

Q. After you terminated your relationship with the Industrial Hospital Association what did you do? A. I moved to Astoria and set up an office there and went into private practice for myself.

Q. Are you engaged in private practice now? A. I am, sir.

Q. Do you take tickets in hospital associations? A. No, sir.

1656 Q. Why not? A. Because I feel that the hospital associations and their manner of operation, as I have seen them, are detrimental to the best interests of the public and of the medical profession. Of course, that means the public, too, indirectly. I feel that they should be forced to operate strictly on an indemnity principle, which we can do by refusing to accept their tickets and by not giving encouragement to their closed panels and other methods by which they give service.

Q. Do you give your patients itemized statements so that they can get reimbursement? A. Yes.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, the previous witness seemed to think, for some reason, there was personal combat between him and me. I trust that you do not have the same impression.

You stated that you went to Westport under an arrangement with Industrial Hospital Association, is that not so? A. That is right.

Q. It is true, is it not, that they set up the equipment for you to practice there? A. That is true, according to the original agreement that they made. It was con-

1657 siderably modified by what I found out later; that is, Mr. Brunkow stated that Industrial Hospital Association furnished no equipment, that I was expected to furnish my own equipment. As a matter of fact, I was able to persuade him to provide a certain amount of equipment.

Q. As to your office there, it is true, is it not, that that was supplied by one of the lumber companies there? A. Yes, the office was supplied by the lumber company.

Q. Now, Doctor, I was unable to ascertain from your direct testimony as to why you left the Industrial Hospital Association? A. Frankly, it was a little bit difficult for me to ascertain, too.

Q. I see. A. I asked for—

Q. It was at their request; that is correct? A. That is correct.

Q. It was at their request?

Mr. Jaureguy: I think the witness was starting to make an explanation and I suggest that he has a right to do so.

Mr. Marcus: I have no objection.

A. You will find, I think, if you have access to their file, that I did make a request in a letter to them for specifications in that matter, and it was ignored.

Mr. Marcus:

Q. You do not think it might have been ignored because it may have been embarrassing to you, Doctor? A. No, I think because it would have been embarrassing to
1658 them.

Q. You have mentioned the fact that on one occasion you were called into the office of one of these lumber companies to go over what you call petty grievances by your patients against you.

Mr. Jaureguy: No, he didn't say that.

Mr. Marcus: That is what I understood him to say.

A. I didn't say by my patients, no. The grievances came indirectly through, I think, the union grievance committee and were presented to the manager of the lumber company. It was all very vague. I was never given a direct opportunity to know what the trouble was.

The Court: CIO or AF of L?

A. CIO, International Woodworkers.

(Sheaf of correspondence relating to the witness' connection with the Industrial Hospital Association, etc., thereupon marked Plaintiff's Identification No. 2063.)

Mr. Marcus:

Q. Isn't it true you were requested to leave by the Industrial Hospital Association because of complaints of the unions and employers down there about you? A. As I

said, sir, I requested the details and specifications and my request was ignored.

The Court: Was there more than one employer?

Mr. Marcus: Yes, I understand there were three involved in that locality.

1659 The Court: Three lumber companies, three lumber mills there?

A. Yes, sir.

Mr. Marcus:

Q. Now, I am reading from Plaintiff's Identification No. 2063—

Mr. Jaureguy: Is this the one I understood you to say you would like to read?

Mr. Marcus: Yes.

Mr. Jaureguy: Then I will object to that being read. That is a letter from some local of a union to the Industrial Hospital Association, and unless it has heretofore come to the attention of this witness, and Counsel wants to show what his reaction was when it came to his attention, he has no business reading it.

The Court: Bring it here.

Mr. Marcus: Well, your Honor,—

The Court: Mr. Marcus, I had hoped that I might be spared this. I am going to endeavor to speak with restraint. Nobody can try a case by reading a whole lot of letters written by outsiders who are not here to face the music. That is fundamental and in my mind, while listening to an expression of your views as you have offered these different letters and when you read them to the witnesses on the witness stand, I have tried to be generous in my point of view, that you would not try to put something in by that device which was not proper to be presented in that

1660 way, and I still feel that way about it. Ask him questions about facts and situations. Don't read letters that somebody wrote to somebody else.

Mr. Marcus: Your Honor,—

The Court: And I told you yesterday I could bring in here some letters that would make you feel badly,—

Mr. Marcus: I have no doubt—

The Court: Let me finish. —you and your colleagues, about this case. I could have turned them over to the United States Attorney and, of course, I would not do that. I just say that, incidentally, I have had some very un-

pleasant letters about the Commander and Mr. Jaureguy. This is a case that has interested a good many people and they have strong feelings about it.

These views of outsiders have no place in this case.

Mr. Marcus: Your Honor, I would like—

The Court: You can ask him about troubles he had with the union down there, but don't read letters that the union wrote, not to him but to somebody else, running him down, because they are not here to face the music.

Mr. Marcus: Your Honor, may I just explain briefly?

The Court: You have the whole Treasury of the United States to bring the man who wrote that letter here, if he has a grievance against this doctor.

Mr. Marcus: The reason I made the remark that
1661 I did to this particular witness at the opening when I started out with him with respect to the attitude of Dr. McKeown was that I knew with respect to this particular witnes some of these unpleasant things would have to come up.

I want to assure you and I want to assure the doctor that I have no means of knowing whether any of these complaints are justified or not. I am willing to believe they are not. What I do want to bring out is, since the doctor on direct examination gave the impression that Industrial, all of a sudden, willy-nilly, threw him out, I have got to show that there was a reason, as far as they were concerned, that they had got complaints from the union and they did get some complaints from the employers. How am I going to show that, without Counsel conceding that, unless I can show that these people wrote in to Industrial?

The Court: The easiest thing in the world. Call either the man who wrote the letter or the man who received it. No, I don't want to hear any more argument.

Mr. Marcus: I have a witness on the stand, your Honor, on cross examination.

Mr. Jaureguy: I want to say one thing to correct that statement. I did not bring out from this witness how his relationship happened to be terminated with Industrial. I asked him when he was there and when he left.

Mr. Marcus: Yes, and you got from him quite a
1662 criticism about Industrial Hospital Association, and I want to show the reason why.

Mr. Jaureguy: I don't see that there was any criticism.

The Court: Mr. Marcus, you didn't pay a bit of attention,—I guess you did not understand it—to my theme, which is that you cannot, as a general rule, question a wit-

ness about letters, uncomplimentary letters about him, written by somebody else to somebody else, that he never saw, or knew nothing about.

Mr. Marcus: All I want to do, if it is all right with the Court, is to merely have the record show that this letter was written to Industrial. I am trying to make the record to show that Industrial, at least in its own mind, has some justification for the severing of relations.

The Court: There are three ways to do it. The easiest way is for Mr. Jaureguy to stipulate that was written to Industrial. The second easiest way is to call someone from Industrial—there is a man sitting right in back of the room now—and ask him if they received this kind of a letter. The third way, which is not very difficult, is to use the Treasury of the United States, which you have been using abundantly, to subpoena the man who wrote it from down there, about 60 miles away. The fourth way, which is absolutely inadmissible, is to ask this man, who never heard of it, I take it, until you started talking about it, never heard that the letter had been written.

Mr. Marcus: I would like to take the first method
1663 if possible.

The Court: Do you stipulate on it?

Mr. Jaureguy: No, I will not stipulate, your Honor.

The Court: All right.

Mr. Jaureguy: The reason for his termination and the hurt feelings of Industrial are not in issue in this case.

The Court: Ask your question. State your objection, if you have any.

Mr. Marcus: Well, I do object to the refusal—

The Court: Mr. Marcus, ask a question.

Mr. Marcus:

Q. Doctor, did it not come to your attention that the union down there was dissatisfied with your services?

Mr. Jaureguy: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer. He has already said that they were.

A. Yes.

The Court: He has already said there were vague complaints but he couldn't get any details of it.

A. I would like to emphasize that again, Mr. Marcus. The complaints were very vague. This letter that you showed

me, that is the first time I had ever seen it, the first time I had ever heard of it. That could have been written to me, but I will make a wager with you that the writer of that letter had never written a letter to me and had never come to me personally with any grievance.

1664 Mr. Marcus:

Q. I want to assure you again that I am not trying to show that any charge was made against you. I am trying to show that Industrial, in its own opinion, might have felt justified in asking for termination of your services.

Now, I am going to come to this question: Assuming that the union had written this sort of a letter to Industrial and that the employers down there had taken up with Industrial the discontent among the members of the union, do you think it was improper for Industrial to request a severance of your services?

Mr. Jaureguy: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer.

A. I think it was, extremely so. I think in such circumstances it is absolutely impossible to—for any doctor to practice good medicine.

Mr. Marcus:

Q. Well, I can see it from your point of view, but, looking at it from the point of view of an insurance company whose ability to retain accounts depends on whether or not the employes are satisfied under the coverage, can you see their point of view? A. I am absolutely unable to see their point of view.

Q. Now, Doctor, you will admit, will you not, that the employers down there supported the position of the Industrial with respect to the severance of your connec-

1665 tion with Industrial? A. Yes, Mr. Marcus. As a matter of fact, the employers down there were the only ones that were able to effect that removal by the process of making office space unavailable to me.

The Court: Did they throw you out?

A. An eviction, your Honor, in Circuit Court.

The Court: In Circuit Court? They brought proceedings against you?

A. Yes.

The Court: Maybe one of them will get real sick someday.

Mr. Jaureguy: You mean proceedings to evict you from your office?

A. Eviction, successful eviction proceedings to put me out of the office, with the help of Industrial Hospital Association.

Mr. Marcus: I move to strike that out, your Honor.

Mr. Jaureguy: I will consent that it be striken, that last part.

Mr. Marcus: That is all.

(Witness excused.)

1666 Dr. Russell W. Parcher was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give your name, please? A. Russell W. Parcher.

Q. Where do you live? A. Seaside, Oregon.

Q. How long have you been there? A. Since the fall of 1946.

Q. What is your occupation or profession? A. Physician and surgeon.

Q. How long have you practiced that profession? A. Since July of '42.

Q. You had your medical education where? A. University of Illinois.

Q. Then you had an internship? A. St. Vincent's Hospital, Portland, Oregon.

Q. Your internship was completed in 1942, is that it? A. Yes.

The Court: Where is the medical school? Is it down at Urbana?

A. No, sir, it is in Chicago, right by the Cook County
1667 Hospital.

The Court: What do they call it, P & S?

A. No, it is the University College of Medicine now.

Mr. Jaureguy:

Q. When you finished your internship what did you do? A. Went into the Army.

Q. You were there how long? A. Until January of 1946.

Q. Was that medical work in the Army? A. Yes, sir; general hospital.

Q. Then, in January, 1946, is that when you went to Seaside? A. No, I stayed in Portland between January, 1946, and August of 1946, at which time I worked, helping numerous doctors here. I was waiting for office space at Seaside.

Q. Then you went to Seaside? A. Yes.

Q. In your practice have you ever taken tickets of hospital associations? A. No.

Q. Why not? A. I decided that I did not want to do that sort of thing.

Q. Any particular reason for it? A. Yes, it was—

Mr. Marcus: Your Honor, may I object to this line of testimony on the same grounds as with respect to the
1668 testimony of Dr. Durno?

The Court: The some ruling. Admitted, subject to the objection. He asked you what your reason was.

A. In figuring it over and thinking and planning how I wanted to practice my profession, I decided I would not accept tickets from outside insurance companies unless I had considered it.

Q. Do you know a man by the name of G. P. Haney? A. Yes, Guy Haney.

Q. Somebody connected with the union down there in Clatsop County? A. Yes.

Q. Did you ever tell him the doctors had a union and under your union relationship you could not take tickets? A. I don't recall saying that.

Q. Did you ever have any conversation with him? A. Yes.

Q. Well, where was it? A. It was in two places.

Q. Tell us what those conversations were. A. I first saw Guy Haney in the local union office at Seaside, which followed his ordering my office girl to refrain from sending any more statements to a patient.

Mr. Marcus: I object to that, your Honor, on the ground of hearsay.

The Court: Overruled.

Mr. Jaureguy:

1669 Q. Go ahead. A. Following this discussion I went to Mr. Haney, which was the first time I had seen him, and asked him why he had come to my office and caused that disturbance. The reason he told me, was that I had to accept a check from the National Hospital Association in payment of a case that I had been billing the individual for, and I told Mr. Haney that I did not feel I had to accept anything from anyone that I did not wish to, and asked him to—first, he said I had to accept it. I asked him under those conditions please not to come into my office and tell me how I could practice or to whom I could or could not send statement of fees, and I left and went back to my office.

My next contact was at least several weeks later, at which time he asked for an interview with me. I agreed and I saw him in my office. He presented to me a check, the same one apparently that had been made out to me earlier in the year which I had returned to the National Hospital Association, and he told me I had to take it because it was money. I contended a check was not money and I told him so. The other basis for not taking it was that I had no fee, no charge to the National Hospital Association; I had done no work for them; and I did not feel I could accept payment for them or anyone for something I had not done.

Well, the argument grew a little hot. His statement was that I had to take it and I must not send any more statements to this man in this case involved; that he
1670 would pay me, but Mr. Haney had told him not to.

So I again told Mr. Haney I would appreciate it if he would please quit interfering with my business and not tell my patient to pay or not to pay; that I did not think it was any of his business and would he please get out.

On leaving the door he said he hoped I did something about it and I assured him I would. He said, "Well, I hope you go to court. We would love to get you there."

Q. That is all the conversation you had with Mr. Haney? A. With Guy Haney; yes, that is all the conversation I had with Guy Haney.

Q. What did you do? A. I went to court.

Q. You brought an action against the patient? A. Against the patient.

Q. That was tried in Seaside or Astoria? A. Seaside.
Q. That is, before the Justice Court, I believe? A. Yes.
Q. What was the decision? A. In plaintiff's favor, my favor.
Q. Then did the other side appeal? A. Yes.
Q. Then what happened? A. It was scheduled to go to the Circuit Court at Astoria, but just very shortly,
1671 days, before the set date I was notified that they would pay the fees and drop the case.
Q. So they did? A. Yes, sir.
Q. That particular patient, you say, told you that he would be glad to pay you but Haney said for him not to? A. The patient didn't tell me that, sir.
Q. Haney told you that? A. Yes, sir.
Q. Have you had that patient since? A. I have never had him as a patient in the office. In fact, I haven't seen him around for a while. No, sir, I haven't had him back there.
Q. You haven't had him or members of the family? A. No, sir.
Q. That lawsuit down there in Seaside, did that get a lot of publicity? A. Yes, sir.
Q. Was it on the back page of the local paper or pretty well near the front? A. No, sir, it was on the front page most of the time.

The Court: They are usually pretty short of news down there.

A. Yes, never have but two or three pages.

Mr. Jaureguy:

Q. Were they small headlines or big headlines?
1672 A. They were pretty good-sized, large type.
Q. Did the National ever put an ad in the paper at the time?

Mr. Marcus: I object, your Honor, unless the witness knows that the ad would be paid for by the National Hospital Association; otherwise it is immaterial whatever he testifies about it.

Mr. Jaureguy:

Q. Well, now, since that lawsuit and that publicity, have you had any more patients that were members of the National Hospital Association? A. Yes, I have continued to treat them.

Q. How does the number you have had since compare with the number you had before? A. I have treated more since my court trial than I did before, per month.

Q. In your conversations with them do they seem to know all about that lawsuit? A. Well, yes, sir, I get razzed quite a little about it.

Q. You say you think you have had more of their practice since then? A. Yes, sir, I have.

Q. Do you take tickets or do you give them bills and let them pay you? A. I have continued to follow my same policy in not accepting tickets.

Mr. Jaureguy: You may take the witness.

1673 Cross Examination

By Mr. Marcus:

Q. I would like to clear up one thing: When you say you do not accept their tickets, do you require them to pay in cash? A. To close the account, yes.

Q. I don't quite understand. Do you give them some bill or something so they can get payment from the National and then pay you? A. Well, yes, sir. I don't insist that they pay cash. Most people down there don't have that much money.

Q. Are you a member of OPS? A. Yes, sir.

Q. How long have you been a member of OPS? A. about just before I started practicing at Seaside; between January, 1946, and August, 1946, I became a member.

Q. I suppose when you moved into Seaside you probably got together with the other doctors there and got some idea about how they felt about various things? A. Oh, yes. We are all good friends.

Q. It is possible, is it not, that in the course of one of your conversations with Mr. Haney you did say that you were not taking tickets because that was against the policy of your union? A. It is possible, sir, yes.

Q. You are acquainted with the fact that a tran-
1674 script was made of the trial of that case. Have you ever seen the transcript of it? A. No, sir.

Q. Have you ever held any office with the medical society down there? A. Yes, sir.

Q. What office? A. Secretary.

Q. Have you ever been on any of its committees? A. Yes, sir. I have been on the Program Committee, a dele-

gate from Seaside to the CPS group, the committee from Clatsop County. I believe that is all.

Q. You are a member of the State Medical Society? A. Yes.

Q. Have you ever been a delegate to the State Medical Society from the local society? A. No, sir.

Q. I don't know yet whether the record shows the name of the particular local society to which you are attached. Would you give us the name?

Mr. Jaureguy: Of which he is a member, you mean?

A. The Clatsop County Medical Society.

Mr. Marcus:

Q. When you came to Seaside, I suppose you never had any experience with any prepaid medical care organization? You had been in the war prior to that time.

1675 A. I had no experience.

Mr. Marcus: That is all.

(Witness excused.)

(Recess.)

1676 Mr. Jaureguy: If your Honor please, the last exhibit that has been marked for identification I have requested Mr. Marcus to let me see it and also to let Dr. Smiley see it so that we can consult about those matters in case they come up later in the lawsuit and we need them further. Mr. Marcus doubts if he has either the duty or the right to show it to me and I would like a ruling from the Court.

Mr. Marcus: Well, your Honor, I suppose if I determine to use it on rebuttal counsel of course would have every right, together with the Doctor, to see it, but without it having been made a part of the public record there might be a serious question of libel and I do feel that it is my duty to resist turning it over to the Doctor inasmuch as it has not been admitted and is not a part of the public record.

The Court: You will have to subpoena it then, Mr. Jaureguy.

Mr. Jaureguy: I understand. Just to give my view, it is that as soon as a document has a pre-trial number that ordinarily it was in the Clerk's possession and available to either side.

The Court: Then let him withdraw it.
Mr. Marcus: I do want to withdraw it.
Mr. Jaureguy: Dr. Rankin.

1677 Dr. John D. Rankin was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination:

By Mr. Jaureguy:

Q. Your name is John D. Rankin? A. Yes, sir.
Q. Where do you live, Doctor? A. Coquille, Oregon.
Q. And what is your business or profession? A. I am a physician and surgeon.
Q. And you have been practicing how long? A. Since 1927.
Q. And what medical school did you attend? A. The University of Oregon.
Q. And then did you have further education or internship? A. I had approximately a little over eighteen months at the Eastern Oregon State Hospital in Pendleton.
Q. Then you started practice where? A. I started practice in St. Johns here in Portland for not quite a year.
Q. And then you went— A. I went down to Bandon in Coos County.
Q. How long were you at Bandon? A. Oh, between three and four years.
1678 Q. Then you moved to Coquille? A. No. I moved to Marshfield for a year, a little over; and then I moved to Coquille.
Q. And have you been in Coquille ever since? A. Yes.
Q. Practicing medicine there? A. Yes.
Q. There is a hospital in Coquille known as the Coquille Hospital? A. There was, but there is not now.
Q. And when did it go out of existence or lose its name? A. Shortly after the war broke out.
Q. And prior to that time who owned that hospital? A. My partner, Dr. Wilson, and myself.
Q. And it was a private hospital? A. Privately owned hospital.
Q. How big a hospital was it? A. 36 beds.
Q. And during the time that you have been in practice

down there have you ever had occasion to treat patients who were members of commercial hospital associations?

Mr. Marcus: Just a minute, Doctor. I would like to make the same objection with respect to the testimony relating to this doctor's experiences with hospital associations as with respect to Dr. Durno.

1679 The Court: The ruling will be the same. The evidence will be admitted subject to objection.

A. Yes, I have.

Mr. Jaureguy:

Q. And did you have occasion to take tickets and send in your bills to that commercial hospital association? A. Yes, for several years I did.

Q. And when did you quit doing that? A. I don't know the exact date, but somewhere near 1940.

Q. And what was your reason for that? A. Primarily because the hospital association ran the doctors rather than the doctors running their own business. We had to do as we were told rather than being able to have some control over what we did.

Q. I would like to read an exhibit that is Defendants' Pre-trial Exhibit 2627 from the National Hospital Association, Portland, Oregon, June 1, 1939:

"Drs. Wilson and Rankin, Coquille, Oregon.

"Dear Doctors: It has come to my attention that several times recently you boys have performed operations without first taking the matter up with this association as is required. I know you are not doing this intentionally, but this is one regulation we must insist upon being complied with; otherwise the association cannot assume the charges. A recent case is the case of Chuck Murphy on whom I understand you operated for hemorrhoids. Except-

1680 ions are always made in emergencies if after investigation it is shown that the person is eligible for care at the Association's expense. Will you please mention this to the other boys and let us have your cooperation in the future. Very sincerely yours, C. C. Bechtold, General Manager."

Will you tell us whether that represented the general course of conduct of that hospital association? A. That happened on numerous occasion, and we also had numerous letters asking us to send them pathological reports on the surgical tissues and that sort of thing. In other words,

there was always a continual exchange of letters regarding our practice.

Q. Well, I want to read Pre-trial Exhibit 2628, Defendants', on the National Hospital Association, Portland, Oregon, January 16, 1939:

"Coquille Hospital, Coquille, Oregon."

This seems to be a mimeographed letter except for the name of the hospital.

"Dear friends: For reasons you will understand, and beginning with January 1, 1939, the National Hospital Association will require that pathological reports by recognized pathologists accompany all bills containing charges for surgery, and will also require that X-ray films with complete readings and copies of laboratory
1681 findings accompany all bills containing charges for X-ray and laboratory examination.

"May we have your fullest cooperation in this matter in order that payment of your accounts may be facilitated. Yours very truly, National Hospital Association, C. C. Bechtold, General Manager."

Will you tell us whether you had any difficulties with the National Hospital Association on these two matters? A. Well, there was always this continual bickering back and forth. It was not always convenient to get authorization before the work was to be done, and then there was the mailing of these tissues in to be—and getting the reports back, and that sort of thing continually happening.

Q. I don't see anything in this letter that I read about tissues. A. Pathological specimens, they said there, which is tissue.

Q. No. This says "pathological reports by recognized pathologists." A. Well, that meant we had to mail to this pathological laboratory the tissues for them to examine.

Q. Did the National tell you where they wanted the pathological examinations to be made? A. I believe it was to Good Samaritan Hospital, but I am not exactly sure of that.

Q. So what did that mean by way of work on
1682 your part? A. Just additional office help and work to do. There was also a time when they had a nurse in one of the plants down there and they wanted us to let the nurse come up and examine our hospital records to see whether we were hospitalizing their patients too long

or if it was necessary for certain patients to be in private rooms instead of in wards, and that sort of thing.

Q. Well, now, this sending of the tissue to recognized pathologists to examine the tissue, is that done before or after an operation? A. That is done after an operation.

Q. And what would be the purpose of examining the tissue? A. I don't know what the reason from their standpoint would be. Of course, that is usually a pretty standard procedure, to do that sort of thing in all Class A hospitals. We were not a Class A hospital and we didn't normally send in an appendix after it had been removed. In some cases where there is a question of carcinoma, a cancer, that sort of thing, it is standard procedure to do it anyway, but it isn't always done.

Q. And did they continue on their insistence that you get the pathological reports to them by some recognized pathologist? A. As far as I recall, they did.

Q. And send tissue into Portland for examination? A. As far as I can remember they did require that, yes.

Q. And sent in the X-ray films to the National
1683 with complete readings? A. Yes, they did.

Q. Copies of laboratory findings? A. That was always required.

Q. Now, when you got a patient that was a member of one of these hospital associations were you always permitted to continue the treatment of the patient or sometimes did you have to let the patient go? A. When I was practicing in St. Johns here in Portland we never could take care of the patient if they were so ill as to need to go to the hospital. We were allowed to take care of anybody that we could treat either at our office or at their home, but if they were sick enough to need to go to the hospital we put them in an ambulance and that was the last we saw of them; after that Dr. Dant took care of them from there on. We were acting as a filtering station for them.

Q. And when you were in St. Johns was there any limitation in your prescribing medicines? A. Except for one time and in that instance efedrin was quite expensive and Mr. Bechtold on a number of occasions asked us not to prescribe it because it was costing too much money to pay for the drugs.

Q. Now, you heard Dr. McKeown's testimony? A. Yes.

Q. About the very brief history of the Coos Bay
1684 Hospital Association and Coquille—what did you call it? A. Medical Service Bureau.

Q. And Mast Hospital Association at Bandon. A. Yes.

Q. And did you have some connection with one or the other of those? A. Well, the history of the situation there was somewhat similar to the situation here in Portland at the time I was in St. Johns in that the Coos Bay Hospital Association was originally owned by four doctors who controlled the practice that went through that office. They limited the doctors aside from themselves as to what they could do and what patients they could take and what they couldn't take. In addition to that, Dr. Dix and Dr. Dixon had a contract on the Coos Bay Lumber Company, which was the largest lumber organization down there, in which nobody but Drs. Dix and Dixon could touch any of their patients. And Pumphrey had a contract on the Evans Auto Loading Company on which I was the only doctor that took take any of the patients. There were 800 people there. So that out of that situation were some in-between doctors who could practically not touch any of them, and it was a matter of straightening the thing out and quit fighting amongst ourselves and getting together to render a better service to the people. There were people, for instance, at the Evans Auto Loading Company who didn't necessarily want to come
1685 to me but they had to come to me, just as there were people with the Coos Bay Lumber Company who didn't want to go to Dr. Dix but had to go to Dr. Dix, and there were people the Coos Bay Hospital covered who didn't necessarily want to go to one of those four doctors but there was no choice in the matter.

Then Dr. Mast had his own contracting setup at Myrtle Point, and those people who were covered by the Mast Hospital Association couldn't go to anybody except to Dr. Mast and his associate there. So at Bandon and at Coquille. Some of this happened before I went to Coquille, but it was all mixed into the picture.

Mr. Marcus: Well, your Honor, I move to strike anything that happened down there before he got down there.

The Court: The motion is denied.

A. At Coquille and at Bandon the National and Industrial Hospital Associations had contracts which all of the doctors in the country took tickets on. Then, as I say, out of this—

Mr. Jaureguy:

Q. Well, then, when you went to Coquille was there an-

other hospital association formed? A. After I went to Coquille was when we decided to put all the doctors in the hospital association business and let them be—the tickets from Dr. Mast, anybody in the county could take them or anywhere else, the tickets from the Coquille Medical Service Bureau could be taken anywhere, and all of the doctors in Coos Bay purchased into the Coos
1686 Bay Hospital Association so it was jointly owned by all of the doctors at Coos Bay, so that all of the hospital association work, practically speaking, rendered then was owned by one of these three organizations.

Q. And then at a later time was there a further step where all the doctors in Coos County became members of Coos Bay Hospital? A. Later, because it was better economics—there was no point in all of us maintaining—there was three offices being maintained where one office could do it—and for just general economy the Coquille Medical Service Bureau and the Mast Hospital Association joined with the Coos Bay Hospital Association and we threw our contracts into their organization and bought, each of the doctors over in our end of the county, then bought a share in the Coos Bay Hospital Association.

Q. Now, at the time of that last step, was that about the time that the OPS was starting operations? A. No. The OPS had been in operation, I don't know how long, but two or three years I would say.

Q. Well, I am more concerned about the time that they were going, that it was to be decided whether they were to go into Coos County. A. Well, the OPS can't come into Coos County unless the local medical society asks them to, and there was a question at the time that we two organizations in the southern end of Coos County decided that we wanted to get organized either with the
1687 Coos Bay Hospital Association or the OPS that we went over to Coos Bay to talk to the rest of the members of the Coos County Medical Society as to which we should do. It was just a—if we had decided to go into the OPS then the Coos Bay Hospital Association would have also needed to go in, and it would have all gone in under OPS at that time, but we decided we liked our local autonomy because it was so much simpler to carry on the business that we had to carry on that we continued doing that.

Q. So you made the choice, the doctors of Coos County, made the choice to carry on under state hospital associa-

tion rather than to be a part of the OPS? A. That is right.

The Court: How many doctors are there in Coos or Curry County now, about how many? A. I think thirty some. I am not just sure. So many new ones come in recently it is kind of hard to keep track of them.

Cross Examination

By Mr. Marcus:

1688 Q. Dr. Rankin, I am not clear in my own mind as to the period during which you were at St. Johns. Would you clear that up? A. I was there from about Thanksgiving time in 1928 until September 1st—no, September 25, 1929. I went to Bandon September 25, 1929.

The Court: Did you put in his training?

Mr. Jaureguy: Yes, your Honor.

The Court: What medical school?

A. Oregon, University of Oregon, yes.

Mr. Jaureguy: University of Oregon, yes.

Mr. Marcus:

Q. When you were at St. Johns were you a member of the Multnomah County Medical Society? A. No, there wasn't any Multnomah—a member of the Multnomah County Medical Society?

Q. Yes. A. I think maybe at the last I may have been an associate member. I am not sure, but you had to be living here six months before you could apply, and I am not too certain of that.

Q. Isn't it true that, although you may have had what is called a gripe at these hospital associations, you would not have ceased to deal with them at the Coquille Hospital except you believed that was the Medical Society policy? A. Well, I helped to make that policy. It was my personal opinion that it should be so.

1689 Q. And that was a part of the Medical Society policy, was it not? A. I think in general, yes.

Q. Doctor, have you held any offices in the Coos and Curry County Medical Society? A. Yes, I have been president and secretary.

Q. Has that been so since January of 1936? A. I couldn't tell you. I am not sure. Down there they just pass

these offices around to whoever they can get to take them. There is no particular honor involved in it. It is a matter of getting somebody to do it, to carry it on.

Q. Have you ever been a member of any of their committees, of that Society's committees? A. Yes, I have.

Q. Well, I suppose you had something to do with making the policy of the local county Medical Society, have you not? A. I have been very active in it, yes, from the time I went down there

Q. Have you held any offices with the Oregon State Medical Society? A. Yes. I am at present Vice-President of the State Society. Several years ago I was Vice-President for a year at that time.

Q. Would that time be sometime after January 1, 1936? A. Yes, I think it was.

Q. Were you also a member of the Council during
1690 that period, the council of the State Medical Society? A. As vice-president I was.

Q. Were you a member before that time? A. A member of the Council?

Q. Yes. A. No, I was not, only the two times that I have held this office.

Q. Are you a participating physician with the OPS? A. I am not certain whether I ever bought any stock in it or not because they do not operate, except there are a few people that come into our county who are members of any kind of a statewide organization. However, I am a trustee of OPS.

Q. Am I correct in assuming that you were one of the incorporators of OPS? A. I don't know if I was or not. I was elected a trustee by the Council of the State Medical Society, but I don't know whether I was an incorporator or not.

Q. Doctor, I will ask you to kindly look at Plaintiff's Exhibit 473, and ask you whether that refreshes your recollection as to whether you were one of the incorporators of the OPS? A. I guess so.

Q. Doctor, did you have anything to do with the negotiations that went on for a while between Northwest Hospital Service Plan, OPS and the State Society with respect to the possibility of having the one confined to hospital service coverage and the other confined to medical
1691 service coverage? A. No, I didn't have anything to do with that.

Q. Doctor, you have referred to various experiences you say you had with some of the hospital associations.

What hospital associations did you have in mind? Was it just the National or the National and Industrial, or what associations? A. At one time or another I have done work for National, Industrial, Pumphrey's, Weston and probably some of our local organizations, besides the present one in operation by Coos Bay, and OPS and so on.

Q. Would it be correct to say that the complaints you spoke about on direct examination were confined to one of these associations? A. That is correct. Most of the complaints are with the National Hospital Association.

Q. Would it be correct to state that the nature of your complaints are revealed in the documents you have turned over to counsel for the defendants? A. I think so.

Q. Now, Doctor, in looking over these documents—I believe there are about fifty of them—I notice that in only one instance is there any correspondence from Coquille to National. In other words, except for one instance, every one of these documents is merely a letter from National.

Do you have the full correspondence with respect
1692 to the cases mentioned in the National documents?

A. I turned over the file to Mr. Jaureguy that we had. That is all I know.

Q. I would like at this time to call for your correspondence with National with respect to these cases, if there is such. A. If it isn't in that file, I didn't have any other that I know of.

Mr. Jaureguy: The statement I made yesterday stands for this, too. Do you recall that?

Mr. Marcus:

Q. Well, Doctor, am I to understand, then, either that your file contains only letters from National or— A. In some cases they are answered on the back of them. I mean on some of these letters the copy of the letter that we answered them, the carbon copy went on the back of the letter. I don't know that all of them are that way, but I am sure some of them are that way.

Q. Well, Doctor, I would like to take up this letter which you referred to on direct examination, the letter about taking up the matter of operations without first checking with the National Hospital Association.

Isn't it your understanding that the reason the National Hospital Association wrote you this letter and similar letters was to make certain as to whether or not under their contract they were liable or would be liable for the

operation? A. Well, if they were not liable they
1693 would not have paid it, anyway, so I don't know as it makes much difference. It was a matter of inconvenience to us to go through with that rigmarole and then many times you didn't get an answer back very quickly, if you did write one.

Q. I was just asking you whether you did not believe the reason that they wrote you about this was so that they could determine in the first instance whether they were liable? A. That is probably partly true.

Q. Don't you think it is proper, a proper thing, under prepaid medical care plans on behalf of the patient, on behalf of the doctor or, in your case, the hospital, and on behalf of the prepaid medical care organization to ascertain where the liability rests before extensive treatment is undertaken? A. I would say it is proper if it were purely to determine liability. That wasn't always the case.

Q. It was certainly the case in a good many instances, was it not? A. Yes, that is probably true.

Q. I forget whether you said you were a trustee or director of OPS? A. I am a trustee.

Q. As a trustee of OPS, you know, do you not, that as to certain types of treatment and surgery OPS also requires authorization? A. I think probably that is true,
although I want to say right here that my connec-
1694 tion with OPS has been very limited. They do not operate down in our district. I go to annual meetings once a year and listen to the annual reports and that is all I ever get. I never go to their monthly meetings, so I don't know much about the way they are running it.

Q. Your own prepaid medical care organization down in Coos Bay also requires authorization in certain cases? A. Yes, they may have it down there that way, but we never do it. We just do it and report to them that we have done it. We never write for authorization. We just go ahead and do the operation and report to the office that we have done it.

Q. Ordinarily, you are close enough in that group down there to telephone in? A. We could very easily, but we have never even done that.

Q. You say "We" never do it. A. My own office, yes.

Q. Reference has been made to Exhibit 2628 in which the National Hospital Association asked for pathological reports. I believe you stated the making of these reports is standard procedure in Class A hospitals? A. Yes.

Q. I don't think you stated on direct examination that you thought it was improper for the hospital associations to ask you for these reports. If I am mistaken, I would like to ask you about that. Do you think it was im-
1695 proper for them to ask for those reports? A. No, I don't think it was improper.

Q. Didn't they pay for those reports? A. I don't remember what the financial arrangement was, whether we paid for them and billed them or how they were paid for. I just don't recall.

Q. You do think they did that on proper authority? A. They probably did, yes.

Q. While your hospital was in existence, did it not make reports for insurance companies, ordinary insurance companies? A. Sure.

Q. And I suppose your hospital also made reports to the Industrial Accident Commission? A. Well, we were required to. Yes, we did.

Q. Doctor, I have Defendants' Exhibit 2632, which is a letter from National to the Coquille Hospital, dated December 17, 1938, in which they raise a question with respect to private rooms for certain patients.

Is that question,—that is, the question of private rooms,—one in which, in your experience, the prepaid medical care organizations are generally concerned with? A. It is an additional expense, yes, and, so, they would be concerned with it.

Q. What I mean by that is, it is one of these items where, if either the patient or the doctor knows that
1696 an insurance company is in the background, private rooms are more likely to be designated than otherwise. Is that not so? A. That is not true in connection with hospital associations because they know you are going to be questioned every time you do it.

Q. I am trying to find out whether in your opinion it is not more likely that where either the patient or the doctor knows that there is an insurance company liable for the payment, both of the hospital bill and the medical bill, that there is more inclination to ask for private rooms than if the patient had to pay the full bill himself and the doctor had to look to the patient? A. You mean from the patient's standpoint there is an inclination to ask for it?

Q. Yes. A. Yes, sure. They will ask for all they can get, naturally.

Q. And during the time you were with the Coquille Hospital were you familiar with the porvisions of the Na-

tional Hospital Association's contract? A. In a general way, yes.

Q. I assume that you knew that they had certain provisions relating to when private rooms would be allowed and paid for, is that not so? A. Yes.

Q. So it is true, is it not, that when you were
1697 asked about the necessity for private rooms for particular patients there was a question of coverage involved? Is that not so? A. That is true.

Q. There are several letters in the file that you turned over to counsel for the defendants which refer to tonsillectomies and a request that the association be contacted before a tonsillectomy is performed.

Isn't it one of the more common provisions in prepaid medical care contracts and prepaid medical care practice that before determining whether or not the prepaid medical care organization is liable for such an operation they want to check to see whether or not it may have been a pre-existing condition so that it would not come under the contract? A. That is true to a degree, although the contracts all state that if they have carried it for six months they are entitled to a tonsillectomy.

The Court: Do these people have a prepaid plan, Coos and Curry Counties?

Mr. Marcus: Yes.

A. The Coos Bay Hospital is owned by the doctors in Coos County, Coos and Curry Counties.

The Court: A prepaid plan?

A. Yes.

The Court: Is it extensive?

A. It is the usual type of coverage.

1698 The Court: In volume?

A. I couldn't tell you the dollar volume.

The Court: No.

A. You mean how much territory does it cover?

The Court: No, hundreds or thousands of subscribers?

A. I would say thousands. We take in most of the industries from Reedsport to Gold Beach or a little below Gold Beach.

The Court: Several thousands?

A. I would think so, yes, I do not know the figure, though.

The Court: Is it a bulk of your practice?

A. It is the bulk of our industrial practice. It covers the bulk of it, practically all of it, in fact.

The Court: Do the employers withhold the money?

A. I think so. There are one or two contracts that are carried through the union, like the culinary union or something, where the people covered are not all under one employer, and then I think it is taken care of by the union, but the balance is taken care of by the employer.

The Court: Do you have a business manager?

A. Yes.

Mr. Jaureguy: I don't know whether your Honor is aware of the fact that we have the figures of the volume of all these hospital associations as reported to the Insurance Commissioner.

The Court: Are they in evidence?

1699 Mr. Jaureguy: I have the pre-trial numbers of my own and some of theirs for my own information. Does your Honor care to have that in the record now?

The Court: I do not particularly care, except while he is here I wanted to know if there had been a great development down there.

Mr. Marcus: I would like to ask this question, because that raises some confusion in my mind.

The Court: I had thought that in the course of time there would be a full record made here of all prepaid activities in the state, that that would levelop out of this trial, be developed by one side or the other.

Mr. Jaureguy: Our Exhibit 2706 is a record of the income and disbursements of all hospital associations from 1935 to 1948, inclusive.

I might state the Coos Bay Hospital Association income for 1948 was $290,044.

The Court: What is that first figure?

Mr. Jaureguy: $290,000. Disbursements, $286,738.

Mr. Marcus: I had assumed the other day that defendants had put in their exhibits. Am I to understand—

Mr. Jaureguy: No, they are half-way in and half-way out. Later on he is going to make his objections.

The Court: That is a nursery rhyme.

Mr. Jaureguy: Yes, I am used to talking that
1700 kind of language, you know. I mean, though, they have been offered and they have been provisionally admitted, as I understand.

Mr. Marcus: I just wanted to make certain that I had seen what you have offered.

The Court: Your prepaid plan is confined to industries?

A. I think there is maybe one plan that is a family plan.

The Court: A family plan?

A. That is taken out from the workman's pay.

The Court: Does that include hospitalization as well as medical and surgical care?

A. That is right. It is a complete coverage plan.

Mr. Marcus:

Q. Doctor, I have here Defendants' Exhibit 2639—

The Court: Who owns the hospitals down there now?

A. The Keizer Hospital is owned by the Keizer brothers in North Band and the Sisters of Mercy run the McAuley Hospital in Coos Bay. The Falk Hospital is run by Dr. Falk of Coquille. The Mast Hospital is now owned by Dr. Thomas. Dr. Mast is dead. The Bandon Hospital is owned by the community.

The Court: A new one?

A. No, it is old. It is one that was left there after the fire that the Red Cross donated to them.

Mr. Marcus:

Q. Doctor, I have before me Defendants' Exhibit 2639 which is a letter from National to you, dated March 24,
1939. It refers to a certain person by name and
1701 states that there is a case in the Bell Knife Hospital under the care of Dr. Richmond that they would like to have examined by you.

The letter states that the patient entered the hospital on February 4th with a cardiac lesion; that Dr. Richmond reports that there followed a severe attack of influenza, and the letter goes on to say:

"We understand Mr. (patient's name) is able to be up and around, but in a recent report from Dr. Richmond he

states the patient will not be ambulatory for a long time. Our purpose in having this examination is to determine the exact condition of this patient and, because of the suggested long period of hospitalization, if it is found the patient is really in a critical condition, we probably will secure a transfer. If it is agreeable with you to make this examination, please advise us and we will notify Dr. Richmond that we have requested your doing so."

Don't you think this was a proper request? A. They were within their rights, but we didn't make the examination because we did not want to get into any dispute with our next-door neighbor.

Q. That does indicate that they have a great deal of confidence in you?

The Court: You can tell your other witnesses that this is the last witness we will have today. There may
1702 be some of them who want to get away.

Mr. Jaureguy: The last witness today?

The Court: Yes, today. I hope we can finish with this witness. I didn't notice any rush for the door.

Mr. Jaureguy: I think they heard you, though, your Honor.

The Court: Apparently this is more interesting to them than it has seemed to me the last hour.

1703 Mr. Marcus:

Q. Doctor, I have here a letter from the National to the Coquille Hospital dated July 15, 1939 in which they ask for X-rays of the chest of a certain person. Doctor, don't you think it is proper for a prepaid medical organization to ask for X-rays? A. We have always sent them in without any objection.

Q. Now, Doctor, I call your attention to Defendants' Exhibit 2648, which is a letter from National to your partner, and the letter is dated July 31, 1939, and it states, "In presenting a statement for the care of (patient) you advise this patient should have specialists care. You did not furnish any information as to the condition from which she is suffering or the kind of specialist to whom you would like to refer her. If (patient) desires to come to Portland and is entitled to service at the Association's expense we will arrange for any care she may require."

Do you find any impropriety in that letter? A. No.

The Court: Before I forget it, you people be sure and give Mr. Cohen and his colleagues the names of the wit-

nesses you expect to call tomorrow. It helps the case along.

Mr. Jaureguy: I have given him the name of the principal one.

Mr. Marcus: I have the name of one.

Mr. Jaureguy: That is what I said.

1704 The Court: Who is that to be?

Mr. Jaureguy: Dr. Baum of Salem, one of the defendants in the case.

The Court: How many individual defendants are there?

Mr. Jaureguy: Eight.

The Court: Mr. Marcus, I want you to be thinking about this, whether at the end of their case you will want to go ahead with your rebuttal then or whether you will want some time to intervene so you can prepare it.

Mr. Marcus: I will say now, speaking as of the present right now, that I am assuming we might request a day or two but not any more.

The Court: If you change your mind be sure to let me know because I make plans too, you know.

Do you still expect to call about fifty all told as you indicated?

Mr. Jaureguy: We expect we will probably call more than fifty.

The Court: You are not making this an endurance contest, are you?

Mr. Jaureguy: No, your Honor. No. We made our schedule to start in with on the theory that we could probably have seven or eight a day, but we have had to revise it very radically.

The Court: Now, look, we have got to get under
1705 better steam than this. How long have you seen these, how long have you had them?

Mr. Marcus: These are Defendants' papers.

The Court: How long have you had them?

Mr. Marcus: We had them yesterday. The Defendants gave them to us yesterday.

The Court: How long have you had them?

Mr. Jaureguy: That is the photostatic copies you have had since yesterday.

Mr. Marcus: Yes.

The Court: Why couldn't you have your data in better shape?

Mr. Jaureguy: The originals have been here several days.

Mr. Marcus: Your Honor, with respect to this particular document, this is the first time I believe I have been